FACT FINDING, 1982-83;
ISSUES AND RECOMMENDATIONS

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INTRODUCTION

Sections 63 and 68 of the **School Boards and Teachers Collective Negotiations Act (Bill 100)** list the procedural requirements which must be met prior to the lawful use of the strike and lock-out. One of those requirements (see Section 63(c)) involves the parties sending all matters remaining in dispute to a fact finder, whose duty it is (see Section 20) to meet with the parties and write a report setting out the issues in agreement and the issues remaining in dispute. A fact finder may also include in his/her report non-binding recommendations which may provide advice and guidance to the parties and assist them in reaching a settlement.

The Education Relations Commission (ERC) is charged with the responsibility (see Section 60 (1)(e)) of selecting and training persons to act as fact finders. To meet this statutory obligation, the Commission has instituted careful selection procedures, has conducted training workshops on an annual basis for both new and experienced fact finders, and has established an apprenticeship training system whereby a new fact finder goes out as an assistant to a more experienced fact finder prior to handling a case on his/her own.

One of the needs that is frequently expressed by new fact finders, both at training workshops and in the apprenticeship programme, is the desire to know more about the various ways experienced fact finders try to resolve the issues which remain in dispute. In response to those requests, the Chairman of the Education Relations Commission has directed the Research Services section to summarize the issues appearing at fact finding and to describe the typical approaches taken by fact finders in their reports. The result of this study was the document, Fact Finding, 1982-83; Issues and Recommendations.

Fact Finding, 1982-83: Issues and Recommendations is based on an analysis of forty-eight (48) fact finder reports released to the public in 1982-83. Care has been taken to provide a fair and full representation of both the issues and arguments advanced by the parties and the positions and recommendations adopted by the fact finders. Wherever possible, the document also links up the positions taken by fact finders with those taken by arbitrators in interest disputes on the same issues, and to data and various other reports which may be related to the topic under consideration.

Because it was not possible to replicate the contents of every report, some judgements had to be made about what issues should be discussed, and what reports should be quoted. In making judgements about the material to be selected for discussion or quotation, the following decision rules were used:

1. There were some thirty (30) or so issues which we chose to ignore because a) they were of fairly local interest to the parties and, consequently, would probably be of little practical value to other fact finders; b) the issues were relatively unimportant in the parties' scheme of priorities and therefore the fact finders treated them in a somewhat cursory manner; and c) the issues had occurred so infrequently that only one or two fact finders had an opportunity to study the matter and hence, in our judgement, not enough experience was available to discuss the issues with sufficient thoroughness.

2. Fact finder quotations were selected on the basis that a) their description of the parties' positions and rationale was, in our opinion, the most complete and readable; b) the position advanced by the fact finder represented the most "typical" fact finder response or, c) the position represented one of a number of alternative approaches to the same issue.

Finally, some caveats are in order:

1. The primary purpose of this document is to identify the issues which are most likely to reach fact finding and to describe typical responses of fact finders to these issues, or where no common position is taken, to set out the various approaches which have been adopted. In no sense was the study prepared to guide fact finders in selecting the "right" position or recommendation.

2. A careful reading of fact finder reports will show that few, if any, issues can be considered in isolation from the total package of issues that are in dispute. Thus, the same fact finder may offer quite different recommendations on the same issue because of the unique nature of each dispute. The reader would be well advised to consider studying a number of reports in toto, as a way of complementing the methodology used in this publication; and

3. On some issues the positions adopted by fact finders have varied with time as new dimensions of the issue become known and as new bargaining trends are established. For example, the positions taken by fact finders with respect to QECO 3 are not the same in 1982-83 as they were in 1976-77. Trends in fact finder recommendations have not been analyzed

because of the enormity of the task. However, this document may provide some form of base line point for efforts of this nature sometime in the future.*

4. Finally, it should be stressed that fact finder recommendations are neither binding on the parties nor do they serve as precedents for other fact finders.

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*This is one of several major considerations of the fact finding process undertaken by the ERC. For example, a 1980 study examined the parties' attitudes toward fact finding and measured the effectiveness of the process. See An Evaluation of Fact Finding Under the School Boards and Teachers Collective Negotiations Act, 1975 (1980). Copies of this study can be obtained from the Commission upon request.

QUALIFICATIONS EVALUATION COUNCIL OF ONTARIO (QECO) CERTIFICATION

Each collective agreement contains a system for establishing the level of teacher qualifications. In some boards, the qualifications programme has been designed by the Board, and the qualifications of the teachers employed in that board are reviewed by board administrators to determine their level of qualifications and subsequent placement on the salary grid. Most boards, however, who do not use a local method of assessing teacher qualifications but rely, instead, on certification charts or "programmes" designed by the Qualifications Evaluation Council of Ontario (QECO). These boards send copies of teacher qualifications to QECO for assessment. Periodically, however, QECO updates its programme scheme. There are, at present, several programmes in use. Determining the appropriate certification programme is one of the on-going issues in teacher/board bargaining in the Elementary and R.C.S.S. panels. Paul Murray, fact finder in the dispute between the elementary teachers and the Espanola Board of Education, offered a background summary of this issue:

> The basic difference between Programme 2 and Programme 3 of QECO is that under the terms of Program 2 a Teacher would be able to advance from Category C to Category B upon the completion of 5 Ontario Department of Education Courses, or 5 Approved University Courses or both. According to the footnote to Programme 2, however, the aforementioned Ontario Department of Education Courses were to be withdrawn from the next publication of the QECO Evaluation Programme. The footnote further provides that a Teacher who is now in Category B by virtue of having taken Ontario Department of Education Courses be allowed until September 1, 1977 to attain another Category B qualification, otherwise, such a Teacher would revert to the category for which they otherwise would qualify...
>
> According to Programme 3, however, the Department of Education Courses are to be retained as a qualification, which retention is contrary to the footnote at the bottom of Programme 2. [Editorial note:QECO 3 (unlike QECO 2) also recognizes Ministry of Education courses for category change to A2, A3 and A4.] It should be noted that the Qualifications Evaluation Council

> of Ontario consists of the four Teaching Federations, and the council prepared Programme 2 and published same. I was advised that the Ontario School Trustees' Council did have some input to Programme 2, however, the Trustees' Council did not participate in the actual preparation of the Programme. Insofar as Programme 3 is concerned, it is my understanding that the Teaching Federations prepared same without dialogue with the Trustees /Council and as soon as the Trustees Council received same, it made its objections known.
>
> The Boards position with respect to this dispute is that:
>
> 1. QECO should be bound by Programme 2 in that it was the clear intention at that time to delete the Department of Education Courses as a means of qualifying for Category B. The board feels that Programme 3 is a complete turnabout and wholly inconsistent with the intentions of Programme 2.
>
> 2. The Board also feels that there should be a single standard in the Province with respect to qualifications for different categories and that since the Secondary School Teachers are required to complete University Courses that the Elementary School Teachers ought to accept the same standard.
>
> The Teachers position is that:
>
> 1. Programme 3 is simply a revision of Programme 2 and that if changes are required from time to time, that the QECO ought not to be hindered by the past.
>
> 2. The Teachers also feel that the Department of Education Courses are of great benefit to them in their capacities as Teachers and feel that some recognition should be given to a Teacher who has improved himself in that capacity by taking such courses.

Murray wrote his report in 1976. By 1982-83, most elementary (74%) and RCSS (76%) boards had adopted QECO 3 as their programme of evaluation.

QECO has now come out with a new programme - QECO 4 - and has stated that it will no longer evaluate teachers on the basis of the QECO 2 programme. This issue surfaced in Graeme McKechnie's 1982-83 fact finder's report in Ottawa Elementary:

In the 1981-82 Collective Agreement, two methods of Category Definition are shown. One involves QECO 2, the other lists definitions within the Collective Agreement itself. The Teachers are requesting that the Collective Agreement now contain QECO 4 as the method of placing a teacher in his/her appropriate category. They request this for two reasons: first, the majority of Boards have now moved to the use of QECO 3 or QECO 4 and only two or three Boards (Ottawa among them) have stayed with QECO 2. Secondly, the Teachers state that QECO will no longer evaluate teachers on the basis of Program 2 so that teachers in the system who have upgraded their qualifications would not be able to gain a statement to this effect from QECO if Program 2 is retained. The Teachers state that this will place some of their members under great hardship. In addition, the Teachers point out that category definitions contained in the Collective Agreement are very close to QECO 3 so that the impact of going to that system would not be too great. Also, they argue that the qualifications program applicable to their secondary colleagues is very similar to the QECO program they request. The Board states that the category definitions in the Elementary Agreement and the program applicable to the Secondary Teachers are not the same as QECO 3 or QECO 4. The Board reacts quite strongly to the notion that an agency which is not a party to the Collective Agreement has been able to state, unilaterally, that an evaluation will no longer be made, placing both the Teachers and the Board in untenable positions. The Board estimates that the initial costs of QECO 4 is approximately $300,000.00 and that a continuing cost would be derived from either the QECO 3 or QECO 4 program. In order to provide an interim measure while discussions of QECO 2, 3, or 4 continue, the Board has suggested that a letter be signed that would permit the Personnel Department of the Ottawa Board of Education to evaluate teachers' qualifications under QECO 2 in response to any teacher's request. In addition, their letter states that no category change would be approved if the resulting salary would exceed $35,000.00.

In part, the Board's interim solution is a recognition of the coming resolution in the legislature - the $35,000.00 cap. However, the Board's interim statement avoids the issue of whether or not the program - QECO 3 or QECO 4 - should be implemented in the Ottawa Board of Education. Data supplied by the Teachers show that only four Public School Boards use QECO 2 -- CFB Ottawa, Manitoulin, Ottawa, and Sudbury. Of the remaining School Boards, the vast majority use QECO 3, a few use QECO 4, and a small number have their own evaluation plans. The Teachers are worried that, with the proposed Letter and Bill 179, the interim agreement will become the "norm" and it will be very difficult to gain any recognition of new QECO programs at a later date.

It is most unfortunate that the evaluation agency unilaterally has put the parties, especially the Teachers, in such a difficult

> position. There is no question that any change to a new QECO program will have a cost impact. This comes at a time when the inflation restraint legislation places great difficulty on the Teachers' ability to trade elements of one form of compensation for another; i.e. salary and benefits for QECO. Nevertheless, the Fact Finder recommends that both parties seriously negotiate with the intent of a move to QECO 3 or QECO 4. The Fact Finder fears that, without such a move, the interim structure may indeed become a longer run solution and both Board and Teachers will find difficulty in terms of personnel relations to make changes. Even though QECO is the creation of the Teachers rather than the Board or the Board and Teachers together, it can be a useful tool for both parties. Since most Boards have now moved to evaluation programs other than QECO 2, it would certainly seem sensible for the two parties to compare the definition in the Collective Agreement with QECO 3 and, if the plans are similar, then it would appear that QECO 3 would be the appropriate system to institute. [See, also, the Dufferin Elementary fact finder's report for 1982-83].

Typically, it is the teachers who wish to move to QECO 4, but in Carleton Elementary, it was the Board. Rick Jackson described the situation in his 1982-83 fact finder's report:

> The current agreement sets out the standards for category placement in the Carleton Elementary System. The Board has proposed that this be replaced with QECO 4, while the teachers prefer the status quo. The Board justifies its request by arguing that to administer its own category placement is a burdensome and complex administrative task, that the very existence of the standards in the agreement is a continuing source of friction and that, since the standards are unique to Carleton Elementary, its salaries cannot legitimately be compared with those of other elementary systems. For their part, the teachers argue that Carleton Elementary is by no means unique in this respect, that many of its membership would be disadvantaged by such a move and that teachers have developed career plans based on the standards as outlined in the agreement; in other words, it is not fair to "change the rules in the middle of the game."
>
> It should be noted that it is not clear in precisely what way the teachers and the Board would be affected financially by such a change; clearly, certain groups of teachers would benefit while others would be disadvantaged. A letter on file from Mr. W.F. Dillon, Administrative Coordinator of the Qualifications Evaluation Council of Ontario, confirms this.
>
> This is an extraordinarily complicated issue and, in my view, there is merit to the arguments on both sides. On the other

hand, the implications of a move to QECO 4, on an individual or collective basis are not at all clear. For this reason, I recommend that this proposal be dropped for the moment but that, before negotiations for the next agreement commence, Carleton elementary teachers have their qualifications reviewed by QECO so that they, and the Board, will have a clearer understanding of the implications. I recommend that the cost of such a review be borne by the Board.

INDEXING

A very common issue, particularly in the secondary panel, is the indexing of grid salaries and principals and vice-principals allowances (or salaries) to the Category A4 maximum.

The teachers request indexing for the following reasons:

(1) it would simplify the bargaining process; all that is required is to agree upon the salary for A4 maximum and all other salaries would be determined according to the indexing system;

(2) to do otherwise, for example, to pay a fixed dollar amount, would cause certain salaries, particularly those of principals and vice-principals, to be paid a lower percentage increase. This, according to the Teachers, would be a signal to them that the school board "places a lower level of worth on its management positions which would discourage employees seeking positions of responsibility" and create "morale problems among school managers."

(3) failure to index salaries would reduce the principals' purchasing power and make their incomes "fall even further behind the rate of inflation."

(4) "principals, because they pay a higher rate of income tax on higher salaries, would receive less in actual spending dollars compared to the teachers."

The School Boards are opposed to indexing. They favour negotiating a "lump sum" or "fixed dollar" amount, the result of which would compress the grid and reduce the salary ratio between the principals' and vice-principals' salaries on the one hand and category A4 maximum on the other.

The school boards object to indexing because:

(1) only two or three boards in Ontario use an indexing system, i.e., Peel and Northumberland.

(2) the boards reject the notion that switching to an indexing system would necessarily simplify the bargaining process; they believe it would only shift the focus of negotiations each year to the various ratios in the index system.

(3) the application of the same percentage would only continue to increase the differentials between teachers and principals, and executive salaries need to be restrained.

(4) "the use of the indexing system might interfere with the practice that normally takes place in negotiations, that is, the ordering of priorities between different items or areas that require particular attention."

(5) the boards prefer to negotiate fixed amounts because it gives them the flexibility to make adjustments "from time to time to reflect changes in job requirements and demands, and competitive treatment in neighbouring boards."

Fact finders are, as a general rule, not in favour of the index system. David Moore's position, outlined in his reports to the negotiators in Metropolitan Toronto, captures the flavour of most fact finders:

> "The comments of Professor Downie in the Sault Ste. Marie award have been repeated many times in relation to increases in the allowances and positions of responsibility. They bear repeating once again:
>
> "...The desire of the teachers to relate responsibility allowances in a fixed manner to increase in the salary grid is incorrect and unrealistic. There is no reason why allowances should be adjusted every year or in a lock step manner with regular salary. Rather they should be reviewed and renegotiated from time to time in response to changing job requirements and demands..."
>
> I am unable to ascertain any logical reason why the allowances and positions of responsibility should be indexed to a particular point on the grid. Such indexing must be for the purpose of assuring that such payments increase in the lock step manner referred to by Professor Downie. Such a provision would represent a major departure from the past practice. While there may be agreements in Ontario which have such provisions, they are definitely in the minority. In the circumstances, I recommend that the teachers proposal for indexing be rejected.
>
> The Board presented a series of statistics which demonstrate a trend of narrowing the gap between the salary paid at category four maximum and the salaries paid to Principals and Vice-Principals. While it is apparent from my comments above that I agree with Professor Downie's conclusions, it is also apparent, in my view, that his remarks cut both ways, that is to say, just as I reject the notion that allowances and compensation paid to persons occupying positions of responsibility should be adjusted in exactly the same manner every year as teachers generally on the grid, I also reject the notion that there should be in each and every year, a continued and persistent relative decline in the real value of those payments. Clearly, at one point in time, a certain premium was received upon a teacher assuming a position of responsibility. While I understand the desire to close that gap on the part of the Board, I can not agree that the gap should be continually closed year after year. If this practice were continued indefinitely, the ultimate result would be to narrow the premium paid to those in positions of responsibility to a figure that would be negligible in real terms. The teachers presented statistics which showed a substantial erosion in the compensation paid to the Principals and Vice-Princials employed by M.T.S.B. relative to the increases secured on the grid since 1976. In all of the circumstances,

my recommendation is that the salaries paid to Principals and Vice-Principals for the 1982-83 contractual year be increased by the same percentage as applies to the grid. Similar considerations apply to co-ordinators and assistant co-ordinators and I make the same recommendations regarding the increase applicable to their salaries."

COST-OF-LIVING ALLOWANCE (COLA)

Generally speaking , COLA clauses have become much less common in teacher/ school board agreements. In 1975-76, 35.0% of the collective agreements on file contained a COLA clause. By 1981-82, 21.9% of the agreements contained such a provision, while in 1982-83, only 11.9%, or 21 of 176 agreements had a COLA. Of these 21, two were found in one year agreements (See Monograph No. 26, p.16 and Provincial Overview, June 1983 p.3).

The vast majority of arbitrators are reluctant to award a COLA in a one year agreement (see Monograph No. 27, Interest Arbitration, p.33). The same position on this issue has been taken by fact finders over the years.

COLA was an issue twice in public fact finder reports in 1982-83. In Grey Secondary, the school board wanted to delete the COLA and COLA FOLD-IN from the agreement, and argued that was a cost item which needed to be reassessed in this period of difficult economic times and further, since there are signs that inflation is falling, they felt the provision had outlived its usefulness.

The Teachers on the other hand, wanted to keep the COLA provision, which had been in the agreement since 1975-76, but asked that the trigger be lowered to 8% and the cap removed.

Malcolm Stockton, Fact finder, responded as follows:

> "Ordinarily, this fact-finder would have some difficulty in supporting a cost of living allowance in a one year agreement. In this case, however, the parties have managed to live with such a clause for a number of years and have obviously managed to structure a number of settlements around it. The fact finder RECOMMENDS therefore, that the parties explore the use of the COLA clause as the foundation for a settlement this year. Clearly, the formula will be effectively "capped" by the tabled legislation".

The Elementary Teachers in Norfolk County requested a COLA clause in their 1982-83 agreement. The COLA would trigger at 8%. The Teachers wanted the clause to protect them from inflation, and to achieve parity with the Secondary Teachers who at that time had a COLA provision. The Board was firmly against such a clause, and argued that the Secondary Teachers obtained it through arbitration after a strike and that they were prepared to take a strike over the issue. The Board believed that a COLA clause in a one year agreement was inapporpriate, because "any substantial losses to inflation can be negotiated in the following year." The Board's position with respect to the Secondary Teachers is to remove or cap their COLA.

Alan Harries, fact finder, stated as follows:

> "While the Teacher's logic, which says that if the Board's intention is to make the two panels equal, then the elementary panel should have the COLA clause, is difficult to refute, I am of the opinion that a COLA clause is not a necessity for a one year contract which parties here are negotiating. I agree with the Board's position that if there are serious inroads made by inflation during one year, these can be negotiated for in the following year having regard to all circumstances.
>
> RECOMMENDATION: That a COLA clause not be incorporated into the contract.

EXTRA DEGREE ALLOWANCE

There were three issues which arose frequently in relation to the extra degree allowance. The teachers wanted to:

a) extend the extra degree allowance to principals and vice-principals,

b) allow the extra degree to "pierce the maximum", and

c) index the extra degree as a ratio to the Category A4 Maximum.

There seems to have been very little consensus among fact finders as to how these issues should be resolved.

As far as extending the allowance to principals and vice-principals is concerned, Anne Barrett, in her Durham Secondary report, said:

> "(I was not) persuaded that Vice-Principals should be granted this extra allowance. Even though a Master's Degree is not essential for promotion to the position, I assume it carries weight in the selection process, and that the promotion and accompanying increased salary is sufficient to reward people holding those degrees."

On the other hand, here is how Harold Jakes, the fact finder for Dufferin Elementary, approached the matter:

> "The Board argues that principals in the elementary panel and principals and vice-principals in the secondary panel are paid on a different responsibility allowance scale and are, therefore, not eligible for the allowance for extra degrees. The fact finder asked the Board if a Master of Education degree was a condition of employment for the position of principal in the elementary panel and he was informed that it was not. Many school boards in Ontario do not discriminate between teachers and principals with respect to the allowance for extra degrees and some do. In my opinion, the practice of paying some members of the Affiliates for the degree and not paying those in positions of responsibility seems to be discriminatory particularly when it is not a condition of employment for the position of responsibility. For example,

> a principal without the additional professional qualifications would be paid the same as one who possess a Master's degree.
>
> It is recommended that all members of the Branch Affiliates under contract with the Dufferin Board receive an allowance."

The issue of graduate degree allowances piercing maximum for principals and vice-principals came up in the Bruce Secondary negotiations. The fact finder, Eric Runacres, sided with the Branch Affiliate on the basis that a graduate degree is not a qualification requirement for these positions of responsibility and they "should not be penalized". Graeme McKechnie, in Ottawa Elementary sided with the Board:

> "The Fact Finder was not presented with any compelling evidence to recommend that the allowance pierce maximum. The Teachers indicate that approximately 40 Principals and Vice-Principals would be eligible to receive extra degree allowances which would mean an expenditure of between $25,000 to $50,000 depending upon the degree held. The amount could come at the expense of other more generally desired expenditures and, therefore, would not seem to provide the more broadly-based benefits the Teachers appear to be striving for at this time. The Fact Finder recommends no change in this Article.

The third issue involves indexing graduate degree allowances to the Category A4 maximum. By this arrangement, all allowances would automatically increase according to the same percentage increase as that given to Category A4 maximum on the salary grid. Alan Harries dealt with this issue in Fort Frances-Rainy River Secondary.

> "The Board is making no proposal for increase in the extra degree allowance until Bill 179 is clarified.
>
> The current extra degree allowance is $250.00 per year for a masters degree. In 1972, this allowance was $450.00, increasing to $500.00 in 1974 and dropping to the current $250.00 in 1976. The Teachers are proposing that this allowance be indexed to category 4 maximum which would translate to $615.00 if a figure of $41,000.00 was used. The following are the degree allowances for other Boards in Northwestern Ontario:

Kenora	$635.00
Dryden	$816.00
Lakehead	$700.00
Nipigon-Redrock	$700.00
North Shore	$650.00

> As can be seen, the Teacher's proposal still places them behind the other Boards in northwestern Ontario. It is interesting to note the position of the degree allowance in 1972 and the further increase in 1974 contrasted with the substantial drop in 1976. It seems obvious that the Teachers gave up $250.00 of their extra degree allowance in 1976 for some reason and have never regained it. The reasons for this were not presented to me. Certainly if the Fort Frances teachers are to be at all close to the neighbouring Boards, the requested increase of $615.00 is not excessive.
>
> RECOMMENDATION: That the extra degee allowance be increased to $615.00 per annum.:

The Renfrew Secondary teachers were also seeking an increase to the $600.00 allowance for a post graduate degree. The teachers were asking for a 9% increase; the board was offering no increase. Paula Knopf, fact finder, decided as follows:

> "Given that this allowance has not been increased since 1977, it would seem that it would not be inappropriate to recalculate the allowance so as to protect its monetary value from inflation. I do not think that it would be inappropriate to increase the amount of the allowance to $650.00 and I so recommend."

In neither of the situations described above did the fact finder recommend indexing allowances to the grid, or applying the same percentage increase on the grid to allowances, but both were sympathetic to situations where the monetary value of the allowance had either fallen behind allowances paid in neighbouring boards or its value had been reduced significantly by inflation.

The issue of granting post graduate degree allowances to principals and vice-principals has not come up as an issue in arbitration; nor has the question of the allowance piercing maximum. The issue of indexing has gone to arbitration, but the principle of indexing has not received strong support (see Monograph No. 27, Interest Arbitration, p.34).

A review of the increases to post graduate degree allowances over the period 1975-1982 indicates only two boards (Lake Superior Secondary and Michipicoten Secondary) where the allowance was increased each year, and maintained essentially the same ratio to Category A4 maximum in both 1975-76 and 1981-82.

EMPLOYEE BENEFITS (INSURED)

There were many issues in the area of employee benefits in 1982-83. The Teachers requests included:

1. Increased board contribution toward the premium costs of health plans.
2. Improved benefits, e.g., better dental plans, greater life insurance coverage, etc.
3. Addition of new benefits such as legal insurance and vision care.
4. Extension of coverage to include:
    - teachers who retire prior to 65, provided that premium costs do not go up, the insurance carrier consents, and the retiree pays the full cost of premiums;
    - spouses of a deceased teacher may continue in benefit plans subject to the same constraints as above;
    - part-time teachers to receive full benefits rather than being prorated as at present;
    - compulsory participation in LTDP and dental plans.
5. More open disclosure of benefit information, including:
    - appending a copy of the benefit policies to the collective agreement;
    - full disclosure of benefit information in a quarterly report to include such information as the number of participants, total premiums paid, benefits paid, commissions paid, risk factor charged against the plans, start-up charges and a breakdown of the claims and premiums charged on behalf of each employee group covered under the plan.
6. Greater participation in joint determination of the carrier.

The school boards had their own requests, including:

1. Limiting their yearly expenditure by fixing premium costs to a specific

date, e.g., OHIP costs as of September 1st, 1982, and

2. Removing the Ontario Teachers Insurance Plan (OTIP) because it may, according to lawyers representing school Boards, fail to meet the requirements of Section 155 of the Education Act.

Fact finders in 1982-83 generally looked at the issue of employee benefits in comparative perspective. The quality of the benefits and the board's contribution were compared to local or surrounding boards, and to wider provincial trends. Total compensation was also a matter of importance. If large increases had been added to the salary grid, there was less likelihood that the fact finder would recommend further changes to the benefits area arguing that there was just so much money to be spent, and the teachers must develop priorities for its allocation. A review of arbitration awards (see Monograph No. 27) indicates a similar approach is used by arbitrators.

Fact finders were also reluctant to recommend the removal of OTIP, were somewhat divided over the issue of fixing costs using specified fee schedule dates and other methods, but were sympathetic to the open disclosure of information about benefit plans.

The introduction of the Inflation Restraint Act in Ontario (Bill 179) tended to complicate the fact finding process. In particular, it was not known initially whether improvements to the fringe benefit packages would have to be considered within the 9% and 5% limits. Most fact finders, assumed this to be the case and, as events proved later, they were correct in their assumptions.

What follows are three examples taken from the reports of experienced fact finders which seem to typify the approaches taken to these issues in the current restrained bargaining climate.

DUFFERIN SECONDARY - HAROLD JAKES

The Teachers propose major changes to this article, i.e. 1) that the rates not be fixed to the September 1st date 2) that the Board increase is share of the benefits from 75% to 100% for existing benefits and 3) two additional benefits, namely a dental plan and a long term disability plan, be added to the benefit plan coverage.

With respect to the September 1st date, the Teachers argue that they are responsible for the entire cost of an increase should it occur after that date. They want the Board to pay its share of any premium increase in proportion to the present plan. The desire to increase the Board's percentage of contribution from 75% to 100% is based on statistical data which show that for the contract year of 1981-82, 62% of Ontario school boards paid more than 75% of the premiums for O.H.I.P., 76% of the boards paid more than 75% of Extended Health, and 84% paid more than 75% for Group Life Insurance.

The Board will not agree to a change in the September 1st date because it protects the Board from unbudgeted increases which may occur during each year of the contract. The Board proposes no change to their share of the premium costs with the caveat that "Should Bill 179 be enacted as currently written, total compensation will be restricted to a maximum of 9% in the first year and 5% in the second year", and that any increase in its share of the premium would become part of the total compensation package. The Board also wants the addition of the words "selected by the Board" included in the first sentence of 9.01(b) Extended Health Care.

It is the fact finder's understanding that no changes in the Board's contribution to the benefit plans have been made for several years. Statistics provided by the Education Relations Commission indicate that the trend in recent years has been for a greater percentage of the costs to be borne by school boards. In the September 1982, Overview from the Commission it states "In 1975-76, the most common level of Board contribution to employee benefits was 70-79%; by 1981-82, the level had increased to 100%." For the 1982-83 contract year, data from the Commission show that 87.4% of the contracts have more than 75% of O.H.I.P. paid by the boards; 81.3% paid more than 75% of Extended Health Care; and 100% paid more than 75% of Group LIfe Insurance. The data also show that 50% of the School Boards paid 100% of O.H.I.P., 62.4% paid 100% of Extended Health Care, and 68.8% paid 100% of Group Life Insurance .

In my opinion, the Board should now be prepared to pay a greater percentage of the cost toward the Teachers' benefit plan in light of the statistics from the education community. The Teachers may now be more interested in having a greater part of the compensation package directed toward benefit plans in light of the most recent economic statement from the federal government where it has reversed its earlier budget proposal which would have made employer contributions to benefit plans taxable.

The use of the September 1st date does seem to be unfair to the Teachers if they are required to pay 100% of any increase during the year which begins on that date and ends one year later when the Board's share of the contribution whould then be effected. As the plans move closer and closer to 100% contribution by the Board, this particular problem will disappear. In light of my recommendation with respect to the elementary teachers and to be consistent, the following recommendations are made.

It is recommended that the words "in effect on each September 1" be dropped from clauses 9.01(a), (b) and (c).

It is recommended that the words "selected by the Board be added to clause 9.01(b).

Clause 9.01(a) Ontario Health Insurance Plan (O.H.I.P.)
Clause 9.01(b) Extended Health Care Plan
Clause 9.01(c) Group Life Insurance

It is recommended that the Board pay 90% of the cost toward employee benefits including Ontario Health Insurance Plan (9.01(a)), Extended Health Care Plan (9.01(b)), and Group Life Insurance (9.01(c)).

Clause 9.01(d) Dental Insurance Plan (NEW)

This is one of two new benefit plans which the Teachers propose. They have named the carrier as the Ontario Teachers' Insurance Plan (OTIP) and request that the Board pay 100% of the costs of this new benefit. In their submission, the Teachers provided data which show that 89% of the 1981-82 contracts in Ontario provide a dental plan and 20% of these plans are 100% paid by the school boards, and 56% are more than 75% paid by the boards.

The Board indicated that dental plan coverage has been discussed in previous rounds of bargaining but the Teachers decided to place more of the total compensation package toward the salary grid rather than on additional benefits. This attitude may now change, however, as employer-paid benefits will no longer be taxable. The board is fundamentally opposed to OTIP as a carrier because 1) section 155(1) of the Education Act provides a legal restriction on the Board in this area

2) OTIP is a programme which is totally in the control of the teachers and is not subject to any accounding or auditing by trustee organizations 3) the adjudication of teacher claims by teachers has the potential for conflict of interest and esclating insurance premiums 4) the experience with other carriers where increased coverage has been attained without additional costs and 5) the purchasing decision for any significant expenditure of public funds should be subject to the normal tendering process.

The fact finder concurs with the Board with respect to OTIP as the carrier for a dental insurance Plan as do many other fact finders, arbitrators and the trustee associations. Perhaps the trustees in Ontario should consider joining with the teachers in Ontario to provide a comprehensive insurance plan coverage for both parties called OTTIP (Ontario Teachers and Trustees Insurance Plan). In any event, it would appear that the time has now arrived for Dufferin teachers to have this benefit added to their protective coverage, with the Board selecting the appropriate carrier. In light of the above rationale and the recommendation which was made for the elementary panel, the following is recommended.

It is recommended that the Board pay 75% of a dental insurance plan which is selected by the Board.

Clause 9.01(e) Long Term Disability Plan (NEW)

Neither party provided very extensive documentation with respect to a long term disability plan. The Teachers have requested such a plan and want the Board to pay 100% of the cost of this benefit. They also provided statistics whereby the 1981-82 contracts in Ontario show that 71% of them make provision for an LTD plan with 26% of the boards paying 75% of the premium.

This is one area of employee benefits where the Teachers may want to review more closely as it is my understanding that if the premiums are 100% paid by the teachers the benefits are not taxable. Also, in light of the Board's desire to "grandfather" the Retirement Gratuity, the Board may want to consider LTD as a viable option for new teachers who would no longer be eligible for a gratuity.

It is recommended that a joint teacher-board committee be struck to investigate the Long Term Disability Plan whereby the benefits which may accrue may be more suitable than those which are proposed for this round of negotiations. In fact, this committee could investigate all of the benefit plans and make recommendations to the Board.

Clause 9.02 Eligibility for Benefits

This clause deals with benefit coverage on a prorated basis for any employee who is covered by the collective agreement. At present, the Board wants the "75% paid by the Board" to remain while the Teachers propose that the clause be amended to read "100% paid by the Board". To be consistent with previous recommendations, the following is made.

It is recommended that 75% in clause 9.02 be changed to 90%.

Clause 9.02(b) Retirement Prior to Age 65 (NEW)

In this new clause, the Teachers propose that an employee who retire prior to age 65 shall be eligible to participate in the benefit plans until he/she reaches age 65 and at the same level of employer contribution that members of the bargaining unit receive.

It is the current practice of the Board to allow employees who retire prior to age 65 to participate informally in the group plans subject to the terms and the carrier and with 100% of the costs paid by such employees. The Board argues that persons who retire are no longer employees and are therefore no longer members of the bargaining unit. The Board also believes that it would be inappropriate to consider extending the bargaining unit beyond the terms of the School Boards and Teachers Collective Negotiations Act.

I concur with the position of the Board and encourage it to continue providing retired employees who are under the age of 65 years with this particular opportunity. In this light I make no recommendation.

RENFREW SECONDARY - PAULA KNOPF

FRINGE BENEFITS

Basically, the fringe benefit plan in the present collective agreement provides for 75% board contribution to O.H.I.P., supplementary medical and semi-private. The Board also contributes to coverage of dependent and accidental death and dismemberment insurance although it is not specified in the agreement. The Board says that this would have to be calculated into the compensation package under the new anti-inflation legislation. It should be pointed out while the Board has voluntarily contributed to this coverage in the past, it gave notice to the teachers early in 1982 of its intention to cease contributions effective September 1982, or, when the last collective agreement expired. Thus, at the present time, the Board is not making the contributions which they had made in the past. It is these contributions that the Board is offering to resume paying however, have them included into and hence costed into the compensation package and collective agreement for the teachers.

Commentary

While the teachers may not enjoy as comprehensive or generously funded fringe benefit package as their colleagues in neighbouring or similar boards, the economic climate of these times does not make it ripe for achieving breakthroughs or extensions in the areas of fringe benefits. Further, by achieving such breakthroughs, the teachers may find themselves in a position that increased benefits would be taken into effect and they would not achieve the maximum salary increases on the grid that they might have otherwise expected under the new legislation. While the teachers may consider increasing their fringe benefit package to be major priority for them, they have given no such indication to me as a fact finder nor do I believe have they given any such indication to the board. Therefore, I recommend that the fringe benefit package not be increased in terms of coverage or percentages paid by the board other than for the teachers to take advantage of the Board's willingness to cover up to the current Ontario Dental Association fee schedule. With regard to the accidental death and dismemberment as well as dependant coverage, I suspect that the Board's decision to discontinue coverage as of September 1982 was a decision made for purposes of putting negotiation pressure on the teachers rather than for any policy or monetary reasons. I suggest that this has had the effect of creating unnecessary illwill and tension in the relationship. I recommend that the Board's past practice be continued unless the teachers are concerned about what effect this may have on the entire compensation package under proposed Bill 179.

MUSKOKA SECONDARY - ANNE BARRETT

The Contract between these parties regarding employee benefits is rather unusual in comparison with other Teacher-Board Agreements in that all of the premium rates to which the Board contributes are set at September 1st of each school year, so that if there is a change in the rates during the school year, the increase falls to be borne by the Teachers, thereby reducing the Board's actual percentage contribution. The only benefit to which this rule does not apply is OHIP premiums and the Board now proposes to limit its 60% contribution to the rates in effect as of September 1st of each school year.

The Teachers, on the other hand, would like to remove these premium date stipulations and to substantially improve the Board contribution to each plan. In addition the Teachers would like a clause requiring the Board to make full disclosure to them of the operation of the various insurance plans in a quarterly report: including such information as the number of participants, total premiums paid, benefits paid, commissions paid, risk factors charged against the plans, start-up charges and a breakdown of claims and premiums charged on behalf of each employee group covered under the plan. (In addition to Teachers, this Board also has Collective Agreements with custodians, secretaries and administrators, all of whom are included in the Group Insurance Plans).

With respect to this disclosure provision, the Board says that it does give premium information to the teachers at the beginning of every round of negotiations and that it would not be appropriate to give out information to the teachers regarding other bargaining units. The Teachers state that information that is given to them regarding the operation of the plans is slow coming to them and sometimes misdescriptive.

In my opinion there is a need for fuller disclosure to the Teachers on the operation of their benefit plans and the parties should be able to work out a mutually acceptable agreement in this area. I agree with the Board however, that it would be inappropriate to provide details of claims made by members of other bargaining units.

With respect to the Board level of contribution to the various Insurance Plans, the Teachers pointed out that this Board contributes less than almost any other Board in the province towards employee benefits, and this appears to be borne out by the statistics provided by the Teachers. In response, the Board says that it bargained for the inclusion of "dating" for premium payments and paid for it by consessions in other areas of the Agreement in the last round of negotiations.

Of great importance here too are the provisions of Bill 179, which appear to provide that total compensation shall be restricted to a maximum of up to 9% in the first year of the Bill's operation. Both parties appear to take the view that an increase in premium rates payable would not be included in the limitation on compensation if a straight percentage figure was included in the Agreement; as opposed to a dollar figure, or a figure set as of a certain date.

I believe that the amendments proposed in committee for Bill 179 address this question of benefits and the costing of them in relation to salaries, and clarification is required before agreement can be reached. It is difficult to formulate a recommendation in this area without knowing the details of the restraints to be placed on the bargaining process.

However, given the relatively low contributions of the Board to these Plans in a provice-wide comparison, and given the rather unusual "premium dating" provisions, I believe the Teachers should be entitled to improvements in the Plans to the full extend allowed by the legislation, whether it be by removal of the premium dates or by increases in Board contributions to the various plans. In saying this I am mindful of earlier remarks made under Article 8, that I would not recommend in favour of stripping a benefit so recently obtained by one party as a tradeoff for other concessions elsewhere in the Contract. However, given the overall limitations on Teacher bargaining goals imposed by Bill 179, I do not believe it is unreasonable in this particular area for the Teachers to gain whatever improvements are available to them. I refer again to my preliminary remarks wherein it was made clear that almost one-third of the School Boards in the province, having settled prior to September 21st, 1982, will come out of the restraint period in a significantly better position than those who settle contracts during the restraint period.

RETIRMENT GRATUITY

Most collective agreements in the province provide teachers with a retirement gratuity which can, depending upon a variety of factors, be worth up to one half their annual salary. In a large number of situations school boards are trying to limit the amount of money they have to pay by:

a) "capping" the amount of gratuity at, say, $15,000;

b) "grandfathering" the benefit, i.e. restricting it to teachers who are presently on staff;

c) disallowing payment of the gratuity to teachers who are eligible to retire on a full pension but do not do so within one year of eligibility (see A. Harries, Fort Frances-Rainy River Secondary);

d) limiting the gratuity to teachers whose age plus years of service equal the "90" factor. (P. Staddon, Timmins Secondary)

The school boards want to limit the gratuity because it represents a large unfunded liability. They argue that with todays' high salaries and generous superannuation benefits the retirment gratuity has become an anchronism.

The teachers, on the other hand, view the gratuity as an expected benefit, and they don't want to see it taken away. They claim that the gratuity, in actual fact, saves the Board money. Since the gratuity is in most cases based on the amount of unused sick leave, it therefore discourages the abuse of sick leave. This, in turn, saves the Board the additional expense of paying the salaries of supply teachers who would be required to cover the classes of the absent teachers. The teachers are unmoved by the Board's desire to "cap" the gratuity. They believe the costs can be projected and budgeted for, and although the gratuity may now be unfunded, there is nothing to prevent a board from making preparations to fund the benefits as, indeed, some boards have already begun to do. They reject "grandfathering" the gratuity because it would be discriminatory to create two classes of teachers. Finally, there is pressure on the local branch affiliates by the provincial office of OSSTF to hold the line on the gratuity.

In virtually every case the fact finders have recommended the parties accept the status quo. Graeme McKechnie's report for Ottawa Elementary is fairly typical of the way fact finders handle this issue.

> The Fact Finder has little sympathy with the Teachers' argument that once a benefit is in the agreement, it should always remain there. Everything in the contract is negotiable and each side can be expected to request changes. Nevertheless, the Fact finder is not disposed to recommend the Board's request that a cap be placed on the retirement gratuity. In most cases the retirement gratuity is a major "emotional", as well as financial, benefit and, while it is true that existing benefits may be changed by mutual agreement, it is more likely that change will occur because a benefit has been traded for some other item that the Teachers feel is more important. Under restraint legislation, the ability to make such trades has been greatly reduced and, therefore, the Board is unlikely to be able to offer the kind of trade-off that would allow the Teachers to make a major change in the gratuity. As a result, the Fact Finder does not recommend that any change be made in the retirement gratuity at this time.

For some fact finders, the issue of retirement gratuity can be a thorny problem. In Renfrew Secondary, for example, the board made it a condition of settlement that "the teachers agree to join them in a committee to look at the retirement gratuity and its alternatives". The teachers refused to participate in such a committee, fearing that to do so would "either be a useless exercise at best or the first step towards the elimination of retirement gratuity at worst". Here is how the fact finder, Paula Knopf, handled this situation.

> The dispute over this item perhaps best exemplifies the problems and the difficulties in the relationship between the parties

> in this County. For the Board to insist upon the teachers' acceptance of participation on a committee which the teachers have clearly indicated they would not make a useful contribution to is an exercise in futility. But worse still, to make such a stringent demand on an item which cannot be of any benefit to the Board has resulted in a needless impediment in these negotiations.
>
> Similarly, the teachers' refusal to even enter into discussions on a committee indicates their tremendous mistrust of the Board and its personnel. I fail to see how agreeing to sit on such a committee can in any way prejudice the teachers' position or jeopardize their current entitlement to the retirement gratuity plan. It is obvious that by sitting on the committee they would be doing so without prejudice to their insistence that the plan either remain as it is or develop more secure funding arrangements. In fact, it could well work to the teachers' benefit to be able to work with the Board to help devise security for future payments.
>
> Thus, the parties are creating major differences on an insubstantial item for reasons which are symbolic of the difficulties in their relationship.
>
> I suggest that this item can best be resolved by the Board ceasing to make the teachers agreement to participate in such a committee a condition to any settlement. The item is of enough importance to the Board that it ought to be discussed separately and resolved independent of the other problems. However, I also recommend that the teachers agree to participate in discussions of the retirement gratuity issue with the board. I believe that it is possible for them to emphasize to all concerned that by agreeing to discuss the problem they are in no way prejudicing the rights of themselves or future employees of the boards towards their entitlement to the gratuity. Perhaps by agreeing to participate in such a committee a better relationship between the parties may develop and proper funding arrangements may be explored.

Finally, there may be subsidiary issues brought up at fact finding. In the Sault Ste. Marie Secondary negotiations the teachers already had a gratuity, but wanted it paid as a death benefit to the estate of a teacher who dies prior to retirement. Here is how Allan Harries approached this issue:

> Teachers, in their brief, advised that at least 93% of the public school boards in Ontario either pay the retirement gratuity to the estate or pay a death benefit in lieu thereof. This was not contradicted by the Board. It does appear inequitable that a person could die just prior to his retirement

> and lose the entire benefit of the retirement gratuity which that teacher has built up over the years. Some provision should be included in this contract to address that inequity.
>
> RECOMMENDATION: That the retirement gratuity be paid to the estate of the teacher or a death benefit be paid in lieu thereof.

Arbitrators seem to handle the retirement gratuity issue in much the same way as fact finders: that is, they opt for awarding the status quo. Although some arbitrators are not enamoured of gratuity plans, they are reluctant to remove or limit them, preferring to see the parties resolve this emotional issue voluntarily at the bargaining table. (For a review of arbitral decisions on this issue, see Interest Arbitration, p. 35-6).

The bargaining trend toward limiting the gratuity (either by grandfathering or capping) is slow, as the following trend analysis for the years 1975-82 indicates.

Retirement Gratuity, 1975-1982

Retirement Gratuity	1975-76		1976-77		1977-78		1978-79		1979-80		1980-81		1981-82	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Elementary Agreements on File	76		76		76		76		76		76		72	
Provision	73	100.0	73	100.0	72	100.0	73	100.0	74	100.0	74	100.0	69	100.0
Gratuity being phased out (i.e., grandfathering")	-	-.-	-	-.-	2	2.8	4	5.5	6	8.1	9	12.2	9	13.0
Other Limitations (i.e., dollar "cap")	-	-.-	-	-.-	4	5.6	6	8.2	10	13.5	11	14.9	12	17.4
Secondary Agreements on File	76		76		75		76		76		76		67	
Provision	73	100.0	74	100.0	73	100.0	74	100.0	73	100.0	73	100.0	64	100.0
Gratuity being phased out	-	-.-	-	-.-	2	2.7	2	2.7	3	4.1	3	4.1	2	3.1
Other limitations	-	-.-	-	-.-	4	5.5	7	9.5	8	11.0	7	9.6	9	10.9
RCSS Agreements on File	48		48		48		48		48		48		48	
Provision	44	100.0	44	100.0	44	100.0	43	100.0	43	100.0	43	100.0	43	100.0
Gratuity being phased out	-	-.-	-	-.-	2	4.5	3	7.0	4	9.3	5	11.6	5	11.6
Other limitations	-	-.-		-.-	11	25.0	10	23.3	10	23.3	10	23.3	10	23.3

SOURCE: Adapted from Table 5.6, Monograph No. 26, Historical Analysis of Collective Agreements, 1975-76 to 1981-82.

LEAVES

a) Sabbatical

Sabbatical leaves were frequently a subject in dispute in 1982-83. The Teachers usually demanded:

a) that more teachers be allowed to take sabbatical. Carleton Elementary Teachers, for example, asked that a minimum of four full-school-year sabbaticals be granted each year;

b) that the maximum reimbursement of tuition costs and salary allowance provided to teachers on leave be increased. The Muskoka Secondary Teachers, for example, wanted tuition costs to be increased from $500. to $1,000. and the salary allowance raised from 70% of full salary to 80%; and

c) the sabbatical plan should be converted to a "professional activity fund" which would ensure the availability of short term educational leaves (Renfrew Secondary)

The school boards, on the other hand, wanted:

a) to reduce the number of teachers going on sabbatical, e.g., as in Sudbury Secondary, where the board requested a reduction in the number of leaves from 3 to 2 per year; and

b) to amend existing plans to allow the Board the discretion to award sabbaticals; e.g., Muskoka secondary wanted the sabbatical policy to read: "normally two sabbatical leaves may be granted in any one year."

The teachers were interested in enlarging the scope and benefits of the sabbatical plans as one method of coping with redundancy problems. In addition, they argued that these plans would stimulate the professional growth of teachers, and thereby benefit the whole system.

Their rationale for converting sabbatical plans into a "professional activity fund" was a follows:

> "because of legislative changes affecting education; more teachers need extra time to update, retrain and develop curriculum. Further, the rapid changes taking place in technology

> are putting additional pressures on the teachers to acquire new skills." (Renfrew Secondary)

Some school boards have found the sabbatical plans to be expensive (e.g. $200,000 in Halton Secondary), and question the benefits actually gained from the sabbatical program. They are not convinced that the advantages of sabbaticals or short term leaves outweigh the disruption of the classroom that is created by the teachers' absences (Renfrew Secondary).

The fact finders have generally taken a conservative approach to the issue of sabbatical leaves. David Moore, for example, states in his Sudbury Secondary Report:

> "...I am of the view that this is not the time for radical changes in the collective agreement and that the parties must be cognizant of and operate within the present circumstances dictating restraint. Having regard to all of my recommendations, I am of the opinion that a cut-back in the number of sabbatical leaves from three to two should not be made and I recommend that the status quo be preserved...."

In Renfrew Secondary the Teachers were requesting a "professional activity fund" equivalent to one percent of payroll, and, further, proposed a joint committee to review applications for short term leaves. Paula Knopf, fact finder in the case, recommended as follows:

> I sympathize with the concern of the teachers to achieve and maintan expertise in a rapidly developing society. However, sabbaticals and leaves such as being proposed at this time must be viewed as luxuries that can only seriously be considered when extra funds are available. This may put an extra burden on teachers to upgrade themselves during the summer months, however, I believe that that is necessary at this time. For the teachers to ask for a sum as high as the equivalent of one percent of payroll to be made available for such leave plans points out the significance of this request in that the sum would be equivalent to approximately $130,000.00. It was not suggested that the teachers were willing to have

> this amount deducted from the monies payable to them as compensation and it does not therefore seem to me that there is any indication that the Board would be able to afford such a sum. Therefore, given the present economic conditions, I cannot recommend any extensions of the sabbatical or short term education leave plans from the present collective agreement.

Other arguments by fact finders in favour of recommending the status quo include:

- the parties have not spent much time negotiating the issue;
- it does not appear to be a high priority for either side;
- there is some doubt that financial improvements to the sabbatical plan might be within the scope of the Inflation Restraint Act; and
- the fact finder is not convinced by either party that a need for change has been demonstrated.

Not all fact finders, however, support the status quo. Doug Belch, fact finder in Halton Secondary, recommended the parties continue their negotiations on the issue and encouraged them to compromise on certain aspects of the plan, i.e., on the number of sabbaticals and the salary benefits.

Alan Harries, in his Fort Frances-Rainy River Secondary report, also recommended an improvement in the sabbatical. Here was his reasoning:

> The Teachers advance the usual reasons for sabbatical leaves but they do point out they are certainly more isolated than Teachers in southern Ontario and it is sometimes difficult to be aware and be knowledgeable about new techniques, information, etc. It is certainly not as easy for the teachers from this Board to attend university to update themselves. Accordingly in my view there is a greater need for sabbaticals in northern Ontario Boards than perhaps would be present in more southerly Boards. The Teachers are proposing that the amount each year be .7 of the category 4 maximum. This would permit one teacher to go on a full sabbatical each year or several teachers to take partial sabbaticals. At the present

time the funding allows for a sabbatical every four years. The Board states that this is sufficient. As stated above, northern Ontario teachers do not have the same education opportunities as their counter-parts in other parts of the province. Further funds should be advanced for sabbatical leaves. The Teacher's proposal of one teacher per year is reasonable. RECOMMENDATION: That sufficient funds be provided to permit one teacher per year to go on sabbatical leave.

For a more detailed analysis of sabbatical leave plans and data on bargaining trends, see Monograph No. 17 Leave Provisions, 1979-80; Table 6.1, Monograph No 26, Historical Analysis of Collective Agreements, 1975-76 to 1981-82; Table 13, Provincial Overview, June 1983.

b) Maternity Leave

The Employment Standards Act, 1974 entitles a teacher to a minimum of 17 weeks maternity leave (for more details see Appendix A, at page 133, for a copy of the Act). However, this does not prevent the parties from negotiating further improvements, and indeed, most collective agreements in the teaching sector allow a teacher up to one, and in some cases, two years leave (see Table 14, Provincial Overview, Sept. 1983).

The teachers are free to apply for unemployment insurance benefits during the 17 week statutory period after waiting the normal two-week interval.

During negotiations in 1982-83, many of the branch affiliates made one or more of the following demands:

1) that the board pay the teacher on maternity leave full pay during the two-week waiting period;

2. that the board supplement UIC benefits during the remaining 15 weeks, thus bringing the teacher up to full pay;

3. that the board continue to pay its share of the teacher's health premiums during the period of statutory leave; and

4. sick leave, **seniority** and teaching experience continue to be accumulated over the duration of the leave.

The most common issue involved the Board's payment of benefit premiums. Richard Jackson, in his Carleton Elementary report, has probably stated the issue most clearly:

> This is a new proposal by the teachers: that the Board continue paying its share of a teacher's benefit premiums while she is on maternity leave for 17 weeks. They support this request on the basis of the proposition that (1) women are a large and critical part of the labour force but that (2) society places a high value on family life and therefore (3) women should not be financially penalized (in a de facto sense) by having to take maternity leave. The Board argues, on the other hand, that maternity leave is just one of many types of leaves without pay granted to teachers and that it would be forced to grant such to cover the benefit premiums for all such teachers, not just those on maternity. It also points out that such clauses are very rare.
>
> Recent agreements in both public and private sector negotiations have included provisions for maternity leave which were very far-reaching. In fact, I believe, a trend is being established which will almost certainly envelope the education field eventually. The belief is becoming more entrenched in society that women are as entitled as men to combining careers with having children and that those careers should not be disadvantaged because the woment must bear the children. For this reason, I believe maternity leave is fundamentally different from any other form of leave of absence. The teachers' request seems to be modest and fair, and a step in the direction the Board must inevitably follow in the future. Indeed, I note that teachers in five other elementary panels already have some form of this arrangement. I recommend, therefore, that this proposal be adopted.

Other fact finder reports that are generally sympathetic to this position include: Alan Harries' reports in Norfolk Elementary and Secondary, Fort Frances-Rainy River Secondary, Sault Ste. Marie Secondary, and Timmins Secondary; see, aslo, Harold Jakes' reports in Dufferin Elementary and Secondary where he recommends an increase in the board's contribution to benefit premiums.

A counter position was taken by Eric Runacres in Bruce Secondary:

> "Branch Affiliate members are entitled to pregnancy leave in accordance with the Employment Standards Acts, 1974 et al. However, they are not entitled to accumulate sick leave credits during this period of leave. The Branch Affiliate views this as discrimination and proposes that they do accumulate such credits.

> A review of the principal education agreements reveals that in 1981-82, of 202 Boards reporting, the vast majority made no contribution to salary or fringe benefits (e.g. sick leave credits). In a few cases the teacher on leave was allowd to keep various benefit plans but reimbursed the Board 100%. The same situation is prevailing through 1982-83. It is not the present custom in Ontario school systems to provide other than approved leave. Whether this will change will be determined by basic societal requirements. The educational scene is not ready for this development at present.
>
> Recommendation:
>
> That the Branch Affiliate withdraw this request pending developments in public attitude within Bruce County and the Province."

This position has also been adopted by Anne Barrett in Muskoka Secondary and David Whitehead in Central Algoma Secondary when the teachers asked for both full pay and benefits. Doug Belch, in his Halton Elementary report, declined to make any recommendation when the teachers asked for supplementary unemployment benefits.

There are no collective agreements in education that provide teachers with full pay and benefits during maternity leave. A few agreements (see Stormont, Dundas and Glengarry Elementary and Secondary, Carleton RCSS, Ottawa RCSS) provide a salary allowance equal to U.I.C. payments during the two-week waiting interval. Some boards pay the full cost of benefit premiums for three months (Hearst RCSS) to 17 weeks (Dufferin Elementary, East Parry Sound Elementary, Ottawa Elementary, Dufferin Secondary, East Parry Sound Secondary, Essex RCSS and Haldimand-Norfolk RCSS), with some agreements proividing for even longer periods of contribution (Timmins Elementary, Wentworth Elementary and Manitoulin Secondary). A large number of agreements (over 40% in each panel) also explicity state that the teacher may continue to participate in the various benefit plans provided she pays 100% of premium costs. (For more details, see Monograph No. 29, Leave Provisions, 1975-76, 1978-79, 1981-82).

This issue has not gone to arbitraion in the Ontario teaching sector.

c) Paternity Leave

Paternity leave was an issue in only three of the 49 fact finder reports which were released to the public in 1982-83. The teachers wanted to: 1) increase the number of days allowed for leave; and 2) have the Board grant the leave with pay. For example, in Central Algoma Secondary, David Whitehead reported the teachers wanted to extend the present arrangement of two days leave to include a third day. The third day of paternity leave was proposed "in the event of complications or need to acclimatize after the wife's return". In addressing the issue, Whitehead said:

> According to data supplied by the Commission there was a great range of provisions for paternity leave in the 72 of 76 collective agreements on file for 1981-82. Of the 72, 32 have a provision for paternity leave. Of the 32 with provisions, thirteen have provision for one or two days while the others have provisions for leave from a minimum of three days up to 5, 10, 20 and even more days. In the absence of agreement between the parties on this issue, I recommend the continuation of the existing provision for two days leave.

As far as providing paternity leave with pay is concerned, Doug Belch dealt with this issue in Halton Elementary and Secondary. The report to the elementary teachers reads, in part, as follows:

> The Teachers have proposed that the Collective Agreement be amended by the addition of the following clause: "on written request of the member, the Board shall grant a leave of absence of up to two days for paternity leave. Such leave shall be granted with pay and without deduction from sick leave credit".
>
> The Teachers point out that society's values are changing as evidenced by the fact that more men are committed to prenatal type programmes. They have also advised that this concept is gaining favour with other Boards of Education in Ontario and again point to the fact that such a clause is present in some present agreements. The Teachers also point out that in a 1980 arbitration within the county, the concept of leave of this type received support.

The Board has pointed out that the Teachers always receive the leave and that the real issue is whether or not it is leave with or without pay. The Board states that Teachers are paid to teach two hundred days (200) annually and with each new leave that is introduced into the Collective Agreement this teaching base is further eroded. While such a plan may gain favour in the private sector, they point out that there is not the same need to substitute labour as in the case of the Teacher and point out that every time such a leave is granted it is necessary to place a supply teacher within the classroom. It feels that the 1980 arbitration award requires that the leave be given and an "after the event examination" take place. If the health of the party is in danger, then the pay is given but, if on the other hand, there is no serious health problem but simply a desire to be present, then pay is not given.

RECOMMENDATION

Budgeting of this expense would be at best only an estimate. The current policy of paying the Teacher when his spouse's health is endangered is laudable. The birth of the child is a joyous event and if the father chooses to be present then he should do so cognizant of the fact that it involves a cost. Generally speaking, given the number of occasions it may occur during one's lifetime, the cost involved does not appear significant when weighed against the satisfaction received.

d) Federation Leave

Federation leave was frequently an issue at fact finding in 1982-83. Generally speaking, the teachers were asking for time off with pay, with the costs of the leave (e.g. for supply teachers) to be picked up by the Federation. The teachers were also requesting that seniority, teaching experience and sick leave accumulate during the leave.

Most fact finders were in favour of federation leave. Take, for example, Eric Runacres' report to Bruce Secondary:

> At present each of the Branch Affiliate President and Chief Negotiator (or their designates) is granted 10 school days leave per year for Federation business. The costs for supply teachers are paid in full by the Branch Affiliate; this is as it should be. This year the Branch Affiliate has proposed that one full-time Branch Affiliate member be released for the year in order to perform Federation business. Once again all costs would be borne by the Branch Affiliate; this would be no cost to the Board. The board's response is negative; they state that "teachers were hired to teach, not this". They submitted that "if a teacher wants to work full-time for the Branch Affiliate a release from contract is possible".
>
> Granted that this kind of statement is typical of "negotiationese:, I still find it dysfunctional. I believe that the appointment of such a person, at no cost to the Board, offers many positive outcomes. Many educational systems have created this position. It provides an excellent opportunity for a teacher to experience something new and rewarding in an era of very limited opportunity for teachers. Boards can profit greatly by being able to relate with someone freed from the demanding day-to-day requirements of teaching and able therefore to provide consistent and ready service to the many areas of mutual concern.
>
> Recommendation:
>
> That the Board agree to the Branch Affiliate's proposal contained in their enumeration of Article 15.07(d).

Paula Knopf, in her report to Renfrew Secondary, also saw federation leave as having beneficial aspects for school boards:

> "It is not uncommon for employers, including boards, to grant full time release to one member of the union to attend to union business. This often works to the advantage of the Board because it enables that person to establish a closer liason with the administration by attending full-time to the administering of the collective agreement."

Other fact finders who have supported the request for federation leave include: Alan Harries (Norfolk Elementary and Secondary, Fort Frances-Rainy River Secondary, London Secondary and Sault Ste. Marie Secondary) and Harold Jakes (Dufferin Elementary).

Although generally supportive of federation leave, some fact finders feel it is not a high priority issue, and when looked at in terms of a total settlement package, there may be some give and take required. As Paula Knopf remarked in her Renfrew Secondary report: "I do not foresee this to be a high priority item for either party. Instead, it is one that they may examine in relationship to the rest of the package that they are seeking and use it as an item of compromise, in either direction, to achieve a final settlement." David Whitehead recommended against including federation leave. In Central Algoma Secondary he felt there was an "apparent lack of present practical problems in this area" -- the Board already having agreed, in practice, to allow absences with pay for federation business, with the Federation being billed, where required, for the costs of supply teachers.

Federation leave has become increasingly common in teacher/school board agreements. Whereas in 1975-76, 23.5% of the collective agreements on file had a short-term federation leave (defined as up to 5 days leave), in 1982-83, 46.9% had such a leave. Long-term federation leave, defined as 6 or more days, increased from 12.0% in 1975-76 to 51.3% in 1982-83 (see Table 6.1, Monograph No. 26, Historical Analysis of Collective Agreements, 1975-76 to 1981-82, and Provincial Overview, June 1983, Table 15).

Long-term federation leave was studied intensively in Clause File No. 19, Long-term Federation Leave Provisions, 1981-82. Of the 98 agreements available for analysis at that time, 32 provided for leave for the Branch Affiliate President or some other person designated by the Branch Affiliate. Most of the provisions allowed for up to one year leave of absence and required the Branch Affiliate to either pay the salary and benefits of the person on leave, or committed the Affiliate to reimbursing the Board for the costs of replacement teachers. Long term leave for persons other than the Branch Affiliate President was found in 23 agreements with the length of leave ranging from 6 to 50 days, in eleven instances, to as much as one or more years in nine agreements. In all but one case, the Affiliate was obliged to reimburse the Board in some fashion.

Approximately 54% of the agreements containing long-term federation leave specify that the teacher's seniority and teaching experience will continue to accumulate while on leave; 46% were silent on the issue.

Federation leave has been an issue in dispute at three arbitrations. No clear trend seems to have been established (see Monograph No. 27, Interest Arbitration, pp. 214-15).

e) Deferred Salary Leave Plans

According to the ERC Provincial Overview for June, 1983, a total of 103 of the 160 collective agreements then on file for 1982-83 had a deferred salary leave plan. The breakdown by panel was: elementary, 62.1%; secondary, 69.8%; and RCSS, 61.0%.

For a detailed analysis of the various elements of deferred salary leave plans see Clause File No. 15, Deferred Salary and Early Retirement Incentive Plans, 1980-81.

The issue of deferred salary turned up infrequently as an issue in dispute during fact finding in 1982-83. In Dufferin Elementary the Teachers were trying to add a "x-1/x leave plan" to their current "4/5 plan". After exploring the issue with the parties Harold Jakes concluded: "It is obvious that this new plan is still in the conceptulization stage and more work will have to be done by both parties before it is fully understood and appreciated". To remove the issue from the table he recommended a joint teacher-board committee be formed to investigate the plan further and make recommendations.

In the London Secondary negotiations, the Teachers were asking for the Board to pay for the fringe benefit package during the year of leave. The fact finder in this dispute, Alan Harries, made no recommendation, leaving it up to the parties themselves to come up with the solution. The fact finder did not draw the parties' attention to Clause File No. 15, which discusses how other boards have handled this issue. The relevant section of this clause file reads as follows:

> "Thirty-eight (38) of 47 plans discuss arrangements for the maintenance of fringe benefit plans. In 16 agreements, the board is responsible for paying its share of the costs of fringe benefit plans during the year of the leave. A further 2 agreements say that employee benefits will continue throughout the period of the deferred salary plan, including the year of the leave, but the Board will pay 80%. In contrast, 20 agreements require the teacher to pay for fringe benefits during the year of leave.
>
> In 9 agreements, income related benefits, like group life insurance and long term disability plans, are tied to the salary actually paid to the teacher in each year of the leave. In 5 agreements, income related benefits are tied, during the years when he(she) is not on leave, to the salary level the teacher would have received had he not been enrolled in the plan. However, while on leave, salary related benefits are tied to the salary the teacher would have received in the year prior to taking the leave had he(she) not been enrolled in the plan. Finally, an additional two agreements tie salary related benefits to the salary the teacher would have received in each year if he(she) were not in the plan."

There were two instances where the Board tried to limit the deferred salary leave plan. In the Ottawa Elementary agreement for 1981-82, 10 teachers were allowed to go on leave each year. In the 1982-83 negotiations, the Board proposed "changing the dates for receipt of applications such that if any teacher does not take a leave as anticipated, other teachers would not be allowed to enter the plan to take advantage of the vacancy." According to the fact finder: "The Board proposes the change for better management of the plan. It states that at present, there are approximately 100 leaves outstanding and expresses concern over management of the system." The Teachers want to be free to apply for the vacancies. The fact finder, Graeme McKechnie, recommended as follows:

> "There are no monetary implications since self-funded leave does not have board funding; Teachers and Board negotiate the appropriate details of funding and, therefore, the principle is really one of personnel management. In this regard, the Fact Finder notes that the Board has the ability to manage the system, since it has agreed to accept the application and is under no obligation to guarantee 10 leaves. The Teachers'

> argument does not change this since it allows teachers to apply for "vacancies". The Fact Finder does not recommend that the Board's proposals be implemented and that one-year notification remain.

Deferred salary has been an issue at arbitration on three occasions, but no trend has been established (see Monograph No. 27, Interest Arbitration pp. 36, 37, 212,213).

E) Bereavement Leave

Bereavement or compassionate leave was an issue at fact finding three times in 1982-83. In all three situations the scope of application was the problem. The teachers wanted the leave to be broadened to include a death of a close friend, or a death of members of the extended family such as grandchildren, nieces, nephews, aunts, uncles, sister-in-law, brother-in-law, and grand-parents-in-law. Alan Harries, in his Fort Frances-Rainy River Secondary report, tended to favour a more restricted definition of family, while Paula Knopf in Welland RCSS and Joe Brazeau in Prescott and Russell Secondary were in favour of a more liberal definition. The rationale in favour of a broader definition is most clearly expressed by Paula Knopf:

> The object of the compassionate leave provisions in the collective agreement seems to be to provide assistance to teachers in the event that death affects their families. It is difficult to argue against the fact that "in-laws" or grandchildren are also considered part of this family. I do not think it is stretching the definition of family too far to include these groups. To include them would be a gesture of goodwill by the Board without imposing any additional cost obligations upon them. Again, I do not think that there is a potential for abuse of these provisions, and one certainly hopes that there would in fact be little need to utilize them. On the whole, therefore, I recommend that the teachers' request be granted.

Virtually every collective agreement (92.5%) in 1981-82 granted a bereavement leave where there was a death in the immediate family. In most cases, either 3 or 5 days was granted. Bereavement leave to attend the funeral of an extended family member was found less frequently in collective agreements, though it is becoming much more common. Presently (1981-82), it is found in 72% of the agreements on file (see Monograph No. 29, Leave Provisions). In the majority of agreements where the length of the leave is specified, it is limited to 1 day, although approximately 1/3 of the agreements in 1981-82 allow for up to 3 days.

This issue has not gone to arbitration.

g) Personal or Confidential Leave

Some teacher affiliates requested a leave of absence with pay for 1-5 days, per school year. Reasons for the absence would not have to be provided.

This issue occurred four times in publicly released fact finder reports during 1982-83, and it is fair to say that fact finders do not, as a rule, look favourably upon entrenching in the contract a paid leave of this nature. Examples:

- "I do not beleive there is any necessity for this type of clause to be introduced into the contract. I am sure that exigencies of urgent personal business are already handled by the Teachers and the Board on an individual basis and that there is no pressing need for this type of leave. I therefore recommend against its inclusion in the contract." (Anne Barrett, Durham Secondary)

- "In actual practice both parties agree that these situations [critical personal problems requiring leave of absence] are handled very compassionately by the Principals of the schools with the support of the Administration.

  I would conclude that to quantify and place in the Agreement these very individual and delicate personal matters actually defeats the intent of the Affiliates concerns. If the proven practice is working and great flexibility is available then the best of all worlds exists. The concern expressed by everyone is that the Principals may be placed in difficult decision-making positions and might like more definite rulings from the Board. I say "no" it goes with the territory. If certain situations arise or procedures acutually need to be reviewed, this can easily be accomplished by the Advisory Management Committee (recommended)." (Eric Runacres, Bruce Secondary).

In two situations the board had already consented to personal leave of absence without pay (either in a previous agreement, or in negotiations over the current agreement). In both cases (D. Belch, Sault Ste. Marie Elementary; Alan Harries, Sault Ste Marie Secondary) the fact finders recommended against the teachers' proposals to have the leave with pay. The position of Alan Harries is explained in his Sault Ste. Marie Secondary report:

> In addition to the present provision in the contract for personal leave, the Teachers are proposing another type of personal leave to attend to matters of confidentiality. The extent of this leave shall be the equivalent to one full day per school year, at no additional cost to the Board. The Teachers reject the Board's proposal, that is, that it would be granted, but with loss of a full day's pay. The Teachers state that the individual teacher who takes the leave provides lessons, and plans the material for the supply teacher and upon return, any marking or other evaluation that is to be done on the day's work is generally done by the teacher. The Teachers say that if the teacher loses a full day's pay, and the Board only paid the supply teacher a portion of this, then the Board has made a profit by this leave. The Teacher's proposal provides that there would be no additional cost to the Board, meaning in effect that the Teacher on leave would receive the difference between his/her salary and the supply teacher's salary. I suppose if no supply teacher were retained, then the teacher would receive his/her whole salary.
>
> The Board further states that if it is mandatory that this leave be granted, then it must be time off without pay. The Teachers at present have a solid leave plan embodied in the present contract. The question of whether or not it should be a loss of pay or "at no additional cost to the Board" should be resolved in favour of the board. If the teacher wishes to take off a day for which he is not accountable to anyone I believe the teacher should do so on his own time. There has to be a limit drawn for the number of days a teacher can be out of the classroom on full pay.

The ERC does not contain a code for this type of leave in its computer bank. However a manual search through the collective agreements for 1982-83 truned up very few instances of such a leave. The following two examples illustrate the different variations in wording.

- Central Algoma Elementary

  CONFIDENTIAL LEAVE
  Item 15:02

  A teacher shall be granted confidential leave(s) to a maximum of two (2) days a teaching year for which no reason is required. Such leave shall be granted by the Director of Education through the Principal and shall be without pay.

- Fort Frances-Rainy River Elementary

9.09 Personal Leave

(a) One personal leave day shall be available for every 50 days in the accumulated sick leave credit plan e.g. 50 to 99 - 1 day; 100 to 149 - 2 days; 150 to 199 - 3 days; 200 - 4 days. A Teacher will be on a permanent contract with this Board before personal leave is possible.

(b) Personal Leave days will be deducted from the accumulated sick leave plan.

(c) Assignments and lesson plans are to be left by the Teacher going on a leave.

(d) A Teacher may use only two consecutive school days for any leave period.

(e) Personal Leave days are not acculative from year to year.

(f) The Board reserves the right to limit personal leaves to one Teacher per school per day to a maximum of six Teachers per day in the system. Personal leaves are subject to the availability of supply Teachers.

(g) Requests for personal leave will be honoured on a first-come, first-served basis except in cases of emergency; therefore, employees are encouraged to make requests for this leave as far in advance as practicable. There is no need to give a statement as to the reasons for the leave; merely a request for the day.

(h) the director may or may not allow further personal leave for reasons of conditions other than herein stated.

This issue has not gone to arbitration.

INSTRUCTIONAL & NON-INSTRUCTIONAL LOAD

a) Teaching Time

According to Table 2, Clause File No. 20, Instructional and Non-Instructional Load Provisions, 1981-82, fifty-six percent (56%) of the secondary agreements on file for 1981-82 had a provision for teaching time. No elementary or RCSS agreements were found containing such provisions.*

There are, generally speaking, two types of provisions: (1) those that set limits on the maximum teaching load; in most instances, it is a maximum of 6 periods per day or its equivalent; and (2) maximum continuous teaching time, e.g., a teacher may not be required to teach a class that would cause him/her to teach more that 160 continuous minutes.

Teaching time was an issue in three of the fact finder reports that were released to the public in 1982-83. In Dufferin Secondary, the teachers wanted to limit teaching time to six credits for teachers, five credits for department heads and four credits for programme supervisors. Since this request is commonly found in secondary agreements, the fact finder (in this case Harold Jakes) supported the teachers' demands on the issue.

In Sault Ste. Marie Secondary the teachers requested the following article:

> It is the intent of the Board not to increase the member's work load or assignments during the life of the Collective Agreement.

The fact finder, Alan Harries, responded as follows:

> While the protection with respect to a member's work load is a legitimate goal in negotiations, in my view the Teacher's proposal is too all encompassing and generalized to be workable in the school system. That is not to say that some other

> proposal might not be workable and would provide the Teachers with the protection which they feel they require. When faced with the changing curricula imposed by Bill 82 and other factors beyond its control, the Board should be able to maintain the flexibility to utilize the teachers in the most efficacious manner in accordance with the spirit and intent of the collective agreement.

Dean Johnston dealt with a very similar issue in his 1975-76 Kirkland Lake Secondary arbitration award. The Teachers were proposing a new clause which would read: "the Board will maintain the teaching load as used in the 1974-75 teaching year for the life of the Agreement". According to the Teachers, the work load in Kirkland Lake was higher than in other jurisdictions and the Teachers were concerned about possible future increases in work load which might adversely affect the quality of education. The Board's position, and the arbitrator's decision, was as follows:

> The Board responded that teacher work load had not been a problem (a position reiterated in the Fact Finder's report) and that with an expectation of a continuation in the decline of students at KLCVI there would be no increase in teacher work load. Moreover, the Board submitted that with wage and price control guidelines imposing ceilings on salary increases in the next agreement to be negotiated one might expect that the work load would become a matter of very strenuous negotiations unlike the situation in the past, and should properly be left to be negotiated by the parties who had much more familiarity with the pertinent conditions than would a compulsory arbitrator.
>
> The evidence from the current agreements of the other six boards in the Highway 11 corridor suggests that this issue has not attracted a great attention. Four of the six agreements appear to have no such provisions and the other two (Nipissing and Timiskaming) have minimal provisions or letters of intent with respect to class size only.
>
> I accept the Board's position on this matter. From the evidence available to me, it does not seem that this is an issue of great significance at present and it has not presented any problems in the past. As a practical matter it does not appear to be necessary that the guarantee the Teachers request would be necessary. In the absence of such evidence and given the fact that this has not been a matter that has attracted

> significant attention by the negotiating parties in the past, I would be reluctant to impose that in the collective bargaining relationship through a compulsory arbitration award.
>
> I conclude that no addition to the current agreement is necessary with respect to Teaching Load.

A rather interesting, though rather rare, example of a demand for compensatory time off for professional services at times other than the school day is offered by David Whitehead in his fact finder's report to Central Algoma Secondary.

> The Affiliate is proposing a new article with provisions for teachers who consent "to be on duty for professional services approved by the Board at times other than during the school day as outlined..." to receive compensation in kind, that is "leave equal to 0.5 of the hours served, may be taken with pay, at a time convenient to the teacher and the principal".
>
> The Affiliate notes that "numerous members of the Branch Affiliate -- in particular, coaches -- are devoting extensive time, energy and money to non-classroom-related activities of significant importance to students". The Affiliate notes that such services "are not part of the teacher's contractual obligation, and are not compensated [for] monetarily in any way, or via other consideration...". The Affiliate stresses that finding teachers willing to undertake such "additional" services will become increasingly difficult at this school as the average age of the teachers increases, just as it is becoming an increasingly difficult problem at other high schools.
>
> The Board proposes omitting such a clause from the collective agreement, noting that (1) the provision is highly unusual and without precedent in any other collective agreement; (2) extra-curricular activities have traditionally been, and continue to be, "a regular part of a teacher's overall duties and responsibilities"; (3) teachers' salaries "are intended to compensate them for this other very important aspect of their work"; and (4) agreement to assist in extra-curricular activities "is, in fact, an important criterion for employment with this board".
>
> Given that the Affiliate identifies this issue primarily as one which may prove to be a potential problem for this school at some point in the future as its teachers age and in light of the convincing rationale presented by the Board, I recommend that this article not be included in this agreement. In light

of the conviction, however, with which the Affiliate presents its case on this matter, the Board may well wish to review the recognition it gives those teachers who provide exceptional services to the extra-curricular activities of the school.

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* Not all agreements were on file for 1981-83 when this analysis was carried out; sixty-eight agreements were still outstanding.

b) Preparation Time

According to Clause File No. 20, Instructional and Non-Instructional Load Provisions, 1981-82, preparation time provisions were found in 25.0% of the agreements then on file for 1981-82. A breakdown by agreement type showed that 4% of RCSS, 21% of Elementary and 40% of Secondary agreements contained "prep" time provisions.

There are three main types of preparation time provisions:

a) minimum preparation time
  - in elementary agreements, mininum preparation time ranges from 60 to 200 minutes

b) minimum time "blocks" for preparation
  - because of the nature of timetabling in the elementary panel it is sometimes difficult to schedule meaningful blocks of time for lesson preparation, hence, some agreements provide for blocks of time of not less than 15 minutes each.

c) maximum number daily lesson preparations
  - in the secondary panel, the trend (such as it is) is toward an average of three daily teaching preparations and four preparations per day as a maximum.
  - in this context, "preparation" refers to "the work involved in preparing to teach a course for which credit is offered."

During 1982-83, there were four fact finding situations where preparation time was an issue. In three situations (all elementary), the teachers were requesting a minimum preparation time of 200 minutes per week (Fort Frances-Rainy River, Ottawa, Red Lake). In Haldimand-Norfolk RCSS the teachers were requesting 60 minutes per week.

The various arguments put forth in favour of establishing a minimum "prep." time included:

1. "curriculum changes necessitated by Bill 82 require the teachers to plan for the special needs of students, and to consult with individual pupils, resource personnel and parents."
2. a preparation time provision would give some relief to teachers of multi-grade classrooms
3. such a provision would ensure a consistent and equitable practice among all teachers.
4. adequate preparation time can help to achieve the goal of individualized instruction.
5. a realistic work load can foster a positive classroom climate.
6. preparation time is a common feature in secondary agreements and elementary teachers see no reason why they should be denied similar working conditions. They argue, according to one fact finder, that "because they do not specialize in one or two subjects they must develop an expertise in many areas and this takes more thought, ingenuity and time than is provided."
7. preparation time can be granted to teachers whose classes are periodically taught by specialists in library, music or French.

On the otherhand, the school boards object to granting such requests because:

1. Costs are prohibitive; more teachers would have to be

hired, thus adding to salary costs. Such cost increases are said to be inappropriate in the current economic climate and if implemented, should be delayed and possibly staged in over a period longer than one year.

2. Only a minority of elementary agreements contain preparation time provisions.
3. The Board has little or no factual information as to what amount of preparation time is currently available to the teachers.
4. The proposal is unworkable, especially in a small school system where the children are normally with the teacher for the whole day.

There have not been enough cases to typify the fact finders' position on this issue. Their views range as follows:

1. "any more in this area will have to be considered in the total cost package and any alternate solution should await clarification of the Restraint Program." (D.S. Lawless, Haldimand-Norfolk RCSS).
2. In Red Lake Elementary, where the Teachers currently have a provision allowing them 200 minutes of preparation time per week, the fact finder was reluctant to recommend more time for preparation (because of cost implications) or recommend removing the existing benefit (because of its educational advantages).
3. "At the present there is a joint liaison committee established to deal with matters such as this and in my view this is the proper vehicle to explore effecting, at minimal cost, preparation time for teachers. The members of the committee would be familiar with the manner in which the schools operate and the manner in which they are staffed and by their input can elucidate the necessary facts upon which proper decisions can be made. RECOMMENDATION: That the joint liason committee consider the question of preparation time and report by April 1st, 1983, said report to constitute the basis of negotiations for the 1983-84 contract in this area." (Alan Harries, Norfolk Elementary).

4. "The [school] Board's view is that it provides ample preparation time [currently, a minimum of 150 minutes] and a review of the relationship between pupils and teachers in the Ottawa Board of Education demonstrates to the Board that it has an effective system which does not require change. Further, the Board argues that the Teachers are putting forth a general 'problem of inadequate time' where one does not exist, although it admits that there might be some situations where individual teachers are somewhat disadvantaged and, if so, these particular cases should be brought forward.

   "No individual cases of disadvantaged teachers were brought to the attention of the Fact Finder; in fact, no general case was made. It is not clear, given the ideosyncracies of timetabling, if there is a need for additional preparation time, or whether this need could be met by rescheduling available time. Without evidence of this and without evidence of particular difficult situations, the Fact Finder is not prepared to recommend that there be an increase in the amount of preparation time." (Graeme McKechnie, Ottawa Elementary).

5. "In my view the main difficulty with preparation time in this board is that some of the teachers do have preparation time in varying degrees while others do not. It would appear that the pupil-teacher ratio in this board is very favourable and to provide preparation time equally to all of the teachers in the board would undoubtedly require the hiring of several additional teachers thus further reducing the pupil-teacher ratio. In times of economic restraint, the Board would be hardpressed to justify a further lowering of the pupil-teacher ratio. If the Teachers feel that preparation time is a high priority with them, then they must be prepared to accept an increase in their pupil-teacher ratio. The Board should also make every attempt to equalize the amount of preparation time throughout the system and make a special effort to provide, if at all possible, some relief to the teachers in the primary grades.

   RECOMMENDATION: That the preparation time provision not be included in this contract but the board should make every effort to equalize the preparation time now available and provide, if at all possible, relief for the primary teachers." (Alan Harries, Fort Frances-Rainy River Elementary).

In one situation (Red Lake Elementary) the Teachers were also requesting that the 40 minutes per day of preparation time be in minimum blocks of twenty minutes. No further elaboration on the issue was given by the fact finder.

The issue of preparation time was invloved in the 1975-76 arbitration for Metropolitan Toronto Secondary. The Teachers asked Mr. Justice Dubin to award them, in addition to their 5 preparation periods per week, another 5 periods which were normally used for assigned or "on-call" substitute teaching. The Teachers wanted these responsibilities to be assumed by occasional Teachers. Mr. Dubin responded as follows:

> "I appreciate that the teachers feel that this extra period can best be used by them for preparation and other work, and that an occasional teacher may have greater expertise in the particular subject which must be taught by reason of the absence of the regular teacher. It is to be observed that the teacher who was absent is invariably absent with pay. I do not think that such added expense for occasional teachers is warranted for the years under consideration."

c) Relief time for Positions of Responsibility

Provisions which grant relief time to positions of responsibility were fairly common in 1981-82 as the following tables indicate.

Table 1 Provisions Allowing Relief Time for Administrative Responsibilities, 1981-82

	Elementary		Secondary		R.C.S.S.		Total	
	%	(n)	%	(n)	%	(n)	%	(n)
Provision	28.1	(16)	44.0	(22)	48.0	(12)	37.9	(50)
No Provision	71.9	(41)	58.0	(29)	52.0	(13)	62.1	(82)
TOTAL	100.0	(57)	100.0	(50)	100.0	(25)	100.0	(132)

Source: Clause File No. 20 Instructional and Non-Instructional Load Provisions, 1981-82

Table 2 Frequency of Provisions Allowing Relief Time for Administration by Position of Responsibility and Board Type, 1981-82

	Elementary		Secondary		R.C.S.S.		Total	
	%	(n)	%	(n)	%	(n)	%	(n)
Principals	19.3	(11)	4.0	(2)	44.0	(11)	18.2	(24)
Vice-Principals	17.5	(10)	6.0	(3)	24.0	(6)	13.6	(18)
Department Heads	0.0	(0)	32.0	(16)	0.0	(0)	12.1	(16)
Others, i.e., Chairmen, Coordinators and Directors	0.0	(0)	22.0	(11)	0.0	(0)	8.3	(11)
Agreements on File		(57)		(50)		(25)		(132)

Note: The column percentages are not additive.
Source: Clause File No. 20, Instructional and Non-Instructional Load Provisions, 1981-82.

The issue of relief time for positions of responsibility occurred twice in fact finder reports which were released to the public in 1982-83.

In Red Lake Elementary, the teachers requested that principal's assistants be allowed 200 minutes per week for administrative purposes in addition to the 40 minutes per day of preparation time. The fact finder, Brian Sharples, recommended in favour of the teachers' position, but added: "If one assumes that the present preparation time [200 minutes] is to benefit a full-time teacher then it would seem that a principal's assistant who's teaching time is reduced by 200 minutes per week should have the preparation time pro-rated accordingly. I would therefore recommend that the time for administration duties be in addition to that pro-rated amount of preparation time rather than the regular amount of time."

Alan Harries, fact finder in Sault Ste. Marie Secondary, also tried to deal with relief for administrative positions, but the lack of consensus over the facts created difficulties in coming to a recommendation:

> A considerable amount of time was spent on this Article in the fact finding and it is of considerable importance to the Teachers. They are proposing that the contract set out administrative time for heads of organizational units equal to a minimum of one full-time equivalent teacher. This administrative time would be in addition to the normal unassigned time accorded each year.
>
> The Teachers state that this problem stems from 1979 when the Board removed administrative time allowances in reaction to a possible grievance being launched by the Branch Affiliate over the issue of class size clauses. They state that this had the effect of a loss of approximately 11 teaching positions and directly increased the work load of department heads and indirectly affected the working conditions of all classroom teachers. The problem has been festering since. At present there is 33 classes alloted for department heads whereas the Teachers are proposing that there should be 36 classes alloted. Although the difference between what is happening and what is requested is small, it is the concept that is the difficulty between the parties. The Teachers want in effect a guarantee of administrative time in each and every secondary school. As I understand it, the way the schools are presently staffed,

this is the decision for the Principal of each and every school and in some schools department heads are receiving a proper amount of time, whereas in other schools they are not. Also the problem further complicates itself when department heads in one school receive time, and department heads in the same school do not.

The Board responds stating that staffing was altered by agreement of the parties as recommended by the monitoring committee in March 1982. Also under Article 16.5.5 the Board can look at various problem areas and allocate the time or personel to these areas that are not adequately covered. The Board further feels that the time given per day (75 minutes) is sufficient for the needs of the department heads and, to this time, the various department heads have not shown that they require more time. The contract contains provisions for maximum class size and P.T.R. and if these are being violated, then the Board feels that the staffing of the schools could be grieved.

This is an area of critical importance in the resolution of the contract and will have to be addressed by the board in some manner. The matter is extremely complex and without spending a considerable amount of time in the system myself, it is very difficult for a fact finder to fully appreciate the extent of the problem and the scope of the solution. Of course if one listens to and accepts one party or the other, then it is relatively easy to understand and recommend a solution to the problem but when both parties report to the fact finder different facts and interpetions of them, the matter cannot be resolved in this forum. Accordingly I must leave this Article for the parties to resolve between themselves.

For more details concerning relief time provisions for positions of responsibility, the reader can refer to Clause File No. 20, Instructional and Non-Instructional Load Provisions, 1981-82, pp. 12-19.

This issue has not gone to arbitration.

d) Lunch Hour Supervision

According to the Provincial Overview, June 1983, 42.4% of the Elementary Agreements on file for 1982-83 had a noon-hour supervision provision. Most of these provisions guarantee a teacher a minimum of 40 minutes for lunch uninterrupted by any supervisory duties. Approximately one-third of noon-hour supervision provisions allow for lay assistants or lay supervisors to either assist or substitute for teacher involvement (see Clause File No. 20, Instructional and Non-Instructional Load Provisions, 1981-82, p. 20).

Lunch hour superision was an issue in only two publicly released fact finder reports in 1982-83 (Norfolk Elementary, Red Lake Elementary). The Teachers in Red Lake were requesting an uninterrupted and continuous lunch period of forty minutes free from supervisory teaching and/or other duties. In response, the Board negotiating committee "assured the Teachers' Committee that all Principals will be instructed to comply with this request wherever possible to do so. In the event a significant number of teachers can not be accommodated, the Board Committee is prepared to recommend to the Board that necessary arrangements be made to provide relief for these teachers." The fact finder in this case took the Board Committee at its word.

This issue has not gone to arbitration.

e) Other Forms of Supervision

Teachers are required, on occasion, to perform other types of assigned supervision, or "on-call" duties, including:

- supervising the classes of an absent teacher
- hall duty
- library duty
- remedial teaching
- home room supervision
- tutoring
- guidance counselling.

Typically, a supervision provision would require a teacher to be available for supervision duties between 2 - 5 periods per week, or its equivalent. Thirty-six percent (36%) of the 1981-82 secondary school collective agreements on file contained supervision provisions. (These types of provisions are not common in Elementary or RCSS agreements).

Paula Knopf, fact finder in the Renfrew Secondary dispute, discussed this issue at length:

> This is the most contentious item in these negotiations. I believe it is fair to say that the dispute over this item is what has prevented the parties from achieving a settlement. The language in the last collective agreement which dealt with staffing policies also dealt with the scheduling of supervision time. The clause which has given rise to all of the problems is clause 21.05(b):
>
> (b) The principals will endeavour to implement the following clauses:
>
> (i) In assigning time, a lunch period of forty minutes will not be counted as assigned time.
>
> (ii) Teachers in positions of responsibility shall be given timetable consideration for departmental administration.

(iii) Supervisory duties may be assigned during the teacher's unassigned time, but such duties shall not exceed forty-five (45) minutes per week. Where a teacher has opted for Clause 21.05(b) (iv), he shall not be assigned supervisory duties.

(iv) A teacher, in consultation with his Department Head and Principal, may choose less unassigned time in return for smaller classes or in order to preserve options.

(v) Maintain as many student options as possible.

(vi) Maintain reasonable class size

(Emphasis added.)

The parties both agree that this clause and its language have in themselves been the source of many problems. Numerous grievances have been filed in the past few years by Teachers who have been assigned more than forty-five minutes supervision time. The basis of the grievance was that the Collective Agreement had been violated by the assignment of more than forty-five minutes. The Board has always answered these grievances by saying that the clause only requires principals "to endeavour" to keep within a forty-five minute guideline. None of these grievances has proceeded through arbitration as the parties have been able to come to mutually satisfactory arrangements in each individual case. However, the parties agree that the imprecision of the language must be rectified as soon as possible so that principals, who must assign supervision time, will know the extent of their discretion and teachers will know to what extent they will be expected to supervise.

The Board has stated bluntly to the Teachers that it will not agree to any settlement unless or until the Teachers agree to amend the clause to provide for a higher amount of supervision time. In return, the Board agrees to write the number into the clause as a maximum time so as to impose a limit upon the principal's discretion to be able to assign the time. The Board is proposing that the Teachers be required to supervise up to one hundred minutes per week.

It is the Board's opinion that more than forty-five minutes of supervision are definitely required in the schools as of now. They justify the figure of one hundred minutes on the basis partly of the study prepared by their Vice-Principals and reported to their Counsel for the Administration of Secondary Schools. That Report reached a conclusion that the present amount of supervision required is sixty-one minutes per week. The Board has taken this figure and projected its future needs and considerations and concluded that given declining enrolment and with it the decline in the number of teachers available to perform supervision, the remaining teachers will have to carry a large share of the supervision required. Further, the Board claims that in some schools there is inadequate supervision because there may be no study halls during the lunch hours and there may be room set aside for students without a supervisor. Therefore, combining the projected declining enrolment and the Board's present dissatisfaction with the present level of supervision, the Board has concluded that one hundred minutes of supervision per week is mandatory.

The Board argues that the problem of supervision has arisen largely because of the fact that supervision used to be handled by teaching assistants within the secondary school. However, the Collective Agreement allowed these assistants to be counted as .5 of a teacher under the pupil/teacher ratio formula and allowed the use of the teacher assistants to be determined through a democratic process of consultation with the Teachers and the Principals. The Board claims that the Teachers have established a policy to eliminate teaching assistants in the school to protect their own jobs and that this has resulted in an increasing of the amount of supervision required from teachers to replace the former teaching assistants.

The Teachers are just as adamant and concerned about the issue of supervision as the Board. A major part of their concern comes from the fact that the Principal of each school is given a great deal of discretion as to how much supervision should be required and in what area. It seems that some principals are more zealous about supervision than other principals and this results in different supervision loads for the teachers depending on where they teach. The Teachers claim that in the particular schools where the principals have implemented a true process of consultation with the teachers to determine what supervision is required, the teachers have been able to recognize that more than forty-five minutes supervision is required and have willingly done this work. However, in other schools where the teachers' advice and assistance has not been sought through consultation nor has the design of the supervision assignments been arrived at through a consultative process, the teachers feel that unnecessary and counterproductive supervision is being performed. Thus, the problem from the teachers perspective is largely one of unfairness arising out of the wide discretion in the present clause.

The Teachers agree with the Board that more supervision time is required. They have suggested that the clause be amended to require teachers to supervise up to fifty-five minutes per week. They claim that this would provide adequate coverage for supervision and would eliminate the difficulties created by the discretion in the present clause.

Another problem that the teachers have with the Boards' position is that they claim that the Board is failing to recognize that the Teachers are also required to cover classes for other teachers for whom supply teachers cannot be or are not hired. They are also required to be in attendance for homeroom duties from fifteen to twenty-five minutes per day. The Teachers also supervise student dances and are present during Parents Night. Finally, a large number of teachers are involved in voluntary extra-curricular duties. The Teachers argue that any supervision clause should recognize the performance of those duties as also encompassing "supervision". Thus, the Teachers suggest the adoption of a clause which calculates supervision time by including this type of responsibility into the formula.

Finally, the Teachers argue that a substantial increase in supervision could only be justified by evidence that there is an increase in disciplinary problems such as vandalism and drug abuse. The teachers point out that there is no such evidence. However, the teachers argue that if they are forced to play the role of "supervisor" in the crime prevention sense, they may be forced to the role of a policeman or adversary which would be detrimental to the productive pupil -teacher relationship. Thus, the teachers argue that it would be more beneficial in the long run to the education system to hire non-teaching staff to deal with the supervision problem.

Commentary

The problem of supervision has plagued the relationship between these parties for many years. The Board has stated flatly that it intends to resolve the problem in this set of negotiations and that it refuses to enter into a collective agreement until it achieves the concession it is seeking on the issue. Equally the Teachers have built up a tremendous resentment over what they perceive to be inequitable supervision assignments and violations of the intention of the collective agreement. Their negotiations seem to be aimed at resolving future conflicts and limiting the discretionary scope of management rights which have been delegated to the individual principals.

It is impossible for me to judge on the basis of the evidence and the submissions presented to me whether there are, in fact, inequities in the allocation of supervision time in this school system. However, it seemed to me that the Board itself recognized that its principals were administering its policies differently. Further, the Teachers were clearly indicating to the Board, their membership's dissatisfaction over the present state of affairs. As administrators of the system, it is the Board's responsibility to ensure that the system is operating fairly and equitably. It is further the Board's responsibility to ensure that any source of dissatisfaction is eliminated as soon as realistically possible. I therefore recommend that it is essential that the Board immediately take steps to ensure the uniform use and application of supervision policies throughout the system regardless of the outcome of these negotiations.

One thing that was apparent was that one of the teachers' concerns about supervision or any increased supervision was based on a honest misapprehension of their responsibilities towards it. The teachers indicated that one of their concerns was that they did not know what their legal responsibilities and liabilities would be with regard to any supervision done outside of the teaching day, that is regarding the loading and unloading of business or time spent in the school yard after the end of the teaching day. The teachers were concerned about individual liability. The Board, in my presence, assured the teachers that the Board considered itself responsible to cover and protect the teachers in the event of claims of liability or in the event of teacher injury arising in the performance of any of these duties. It is hoped that this assurance from the Board will alleviate this particular ground of concern.

I think the report prepared by the Vice Principals for the Counsel of Administration of the Secondary School regarding supervision is very significant. The Report outlines the factors that affect supervision, the basic supervision requirements in the schools, the histroical background of the problem and factors that the principal must consider in assessing his/her supervision requirements. Further, the Report makes it abundantly clear that in five of the seven schools in this district, the teachers are supervising at forty-five minutes or more per week. There are just two schools in which the teachers are not supervising up to maximum, in some cases. The Report concludes with three important recommendations. They are as follows:

"1. Since most teachers carry a full load of teaching and in addition assume a leadership role in some aspect of school co-curricular activity, their ability to absorb a large quantity of supervision is unrealistic.

2. The minority of teachers who do not engage in co-curricular activities are in fact supervising the classes of their colleagues

3. For your consideration we recommend that - (1) Each secondary school of six hundred students be allocated a teacher assistant to assume some of the supervision duties. (2) That schools with a large student population be assigned an extra teacher assistant on the basis of 1/6 time for every one hundred students."

These recommendations were prepared by a committee composed of members of the teacher organization. The Report acknowledges that more supervision is required in the schools. Thus, it legitimizes the Board's deep concern over this issue. However, the Report concludes that a maximum of sixty-one minutes of supervision would be sufficient for the present needs of the school after having taken into consideration what are the legitimate functions and requirements of supervision. Thus, from the Report, it is difficult to see a justification for the Board's projection that one hundred minutes are required at this present time even given an expected decline in enrolment.

The other significant thing about this Report is that it recommends that additional teaching assistants should be hired. While the issue as to whether such teaching assistants should be calculated into the pupil/teacher ratio has been a contentious one in the past, it is not a formal issue at this time. Given that this is a teacher recommendation and that the teachers themselves seem to want some of the load to be borne by the teacher assistants, it would seem to me that this could be one alternative for the parties to adopt. It would relieve the supervision load from the teachers, it would allow the Board to assign much more supervision at much lower a cost. However, the teachers must recognize that if they accept this route, it may lead to the declaration of redundancies of some of their membership. For this reason, the teachers may not be willing to accept this as an alternative and would therefore have to accept responsibility for undertaking more supervision.

Another alternative the parties could adopt would be to re-design a supervision clause which would also give recognition to the teachers for on-call, extra curricular and after-hour professional responsibilities as teachers. The advantage of such a clause is that it would create goodwill by having the Board formally acknowledge the teachers' many efforts to develop a creative and disciplined learning environment. If such a clause is developed, it would have to include even more than the one hundred minutes suggested by the board to encompass the new definition of "supervision time". Unless the clause is very carefully drafted, it may not resolve the problems of having teachers simply walk the halls or sit in lunch rooms for more time than they presently desire to spend.

I recommend that the most expenditious solution at this time would be to adopt a slightly amended clause providing for a maximum amount of assignable supervision time within a range of sixty-five to eighty minutes. If this is implemented, in conjuntion with my recommendation that the Board begin ensuring equal administration of fixed supervision policies, I believe that the problems of supervision will resolve themselves in the future. When and if more supervision time is required in the future, it is always open for the parties to re-negotiate the number of minutes. If the system is being administered fairly at that time, it would be apparent to all concerned and the re-negotiation of the clause would not be so difficult because it would not be fraught with the feelings of injustice which are now plaguing these negotiations. Further, I recommend that the imprecision of the language in the present clause be amended to remove the phrase "will endeavour" from the language and replace it with a mandatory requirement limiting the maximum amount of supervision time available. I recommend to the parties that they consult the ERC Teacher/Board Collective

> Agreement Clause File No. 20 regarding instructional and non-instructional load provisions, 1981-82, issued in January of 1982. Part V of that report outlines various alternatives for the drafting of clauses such as this and may be of assistance to the parties in devising appropriate language to resolve this issue.

Supervision time was also an issue in Sudbury Secondary. David Moore, fact finder in the dispute, had this to say:

> "...the teachers wish to include provisions in the collective agreement which would regulate the assignment to each teacher of duties in excess of six forty-minute periods per day. Such assignments consist primarily of supervisory duties. The Board has countered with a proposal to attach a letter of intent to the collective agreement recognizing the desirability of ensuring an equitable distribution of supervisory duties.
>
> "...It is desirable that such perceptions [the teachers' perception of an inquitable distribution of professional duties] be cured by better consultation between the parties. My only recommendation in this area is that the parties strive to imporve their communications and that an effort be made to avoid any inquities in the assignment of either supervisory duties or extra large classes. Whether this is accomplished by way of letter of intent or by way of some wording in the contract is, in my view, of little importance. What is important is that an effort be made to improve the lines of communication in relation to these issues. It may well be that this can best be effected through some form of committee. I make that statement subject to the provison that, if the matter is to be referred to some type of committee that will only be a solution if the committee is active and deals with the problems in question. Otherwise, resorting to some type of committee structure will merely postpone the problem and increase the tensions arising out of it which are undoubtedly at the root of these demands.

This type of issue has not gone to arbitration.

STAFFING

a) Class Size

The frequency of class size clauses has increased slowly since 1975-76, and is now found in 33.8% of the agreements on file for 1982-83 (see Provincial Overview, June, 1983, Table 16). The majority are of a guideline nature.

Class size was an issue in dispute on at least four occasions during the 1982-83 round of fact finding. The complexity of the class size issue, and the common method of approaching the problem is expressed well in this report from an experienced fact finder (Graeme McKechnie, Ottawa Elementary).

> Class size is a difficult item in any Collective Agreement in education. Neither party agrues the precision of a particular class size and both parties apparently agree that the system, at this point, works quite well. The teacher have put forward a number of proposals regarding class size and the Board has suggested one proposal. The Board proposal would take the average class sizes for the system, which in 1981/82 are: grade 1 - 24.0 pupils, grades 2-6 - 28.0 pupils, and combine these in one category, grades 1-6 - at 28.0 pupils. The board indicates that this proposal flows from an administrative committee - of a principal, a trustee, and a community representative - which decided that such a move would not affect staffing and was in accord with good educational policy.
>
> The Teachers argue that the system-wide class size average should be replaced with a school specific class average. The Teachers would leave the current class sizes in place but calculate them on a school by school basis. Their argument is that the present system-wide class average damages the larger schools because the smaller schools clearly have classes under the average and larger schools have classes over the average. A school average, argue the Teachers, will remove this problem. They cite a report of the Board in February 1982, regarding class size as support for the Teachers' position, since it refers to "schools that are penalized by the system average".
>
> The Board argues that the Collective Agreement figures are the legal requirement; however, the Board has always staffed at a higher level and that the report cited by the Teachers supports this. The Board also states that the decision of Trustees to keep smaller schools open and to maintain small classes would have to be re-evaluated if the Teachers insist on a school specific class size average.

The data provided by the Teachers is not persuasive in demonstrating that the system of class size averaging now used works to a major disadvantage. Although there are classes that have more students than the average, there are a large number that are much smaller than average. The Board stated at the hearing that it was always willing to address particular problems. The Fact Finder is not persuaded that the Board's proposal provides major advantages to the system. As a result, the Fact Finder recommends that Article 19.01 and the various class sizes shown there not be changed at this time.

The Teachers go further in their requests regarding class size and have proposed a new set of techniques to 'count' students in the calculation of average class size. Two styles of counting are proposed. First, it is proposed that early immersion classes, late immersion classes and special education classes including enrichment be treated separately when the class size averages are calculated. Secondly, the Teachers request that when junior and senior kindergarten are combined and Grades one and two are combined, a maximum class size be established. The suggested maximum is the mid-point of the individual class sizes set forth in the 1981/82 Agreement.

No compelling evidence was suggested to the Fact Finder for making such changes. While it may be argued that smaller classes are better than larger classes, this is not an axiom and should be tested by exploring the difficulties with various class sizes. The Fact Finder suggests that if particular difficulties exist, these be brought to the Board. If a general case for change can be made, class size could be dealt with in future negotiations. For the present, however, the Fact Finder recommends that no change take place.

The Teachers also propose a new section, 19.02, which would "weight" classes differently. Specifically, students classified as exceptional are given a weight of 2; those with physical handicaps, a weight of 4; and students who are classified as either exceptional or handicapped and are part-time are given the same weight as those who are full time; and, finally, a student enrolled in a triple-grade class would have a weight of 2. In all cases this system of weighting would serve to lower the actual number of students in any given class since the calculation of the average would be affected.

The Board is greatly concerned that the Teachers' proposal will upset what both parties regard as an excellent delivery of special education services. The Board states that its special education programs are at the forefront of developments in this kind of education in Ontario, in Canada, and, perhaps, in North America. As well, the five-year plan which the Board has generated in anticipation of needs under Bill 82 is a proposal that the Board sees as giving no indication of major shock waves to its teachers. The Teachers' proposal regarding weighting is a great departure from the Board's understanding of Teacher concerns.

To the Teachers, the problem of class size is, to some extend, an immediate concern since class sizes are known and the details can be calculated. However, some of the Teachers' proposals in 19.01 and those in 19.02 are addressing issues in the future, even though some of the special education situations are now in the schools. No information was brought to the hearing which would indicate that the present system of administering special education programs and delivering special education services had such defects as to require weighting of special students. Given that these are future concerns and not present situations, the Fact Finder is reluctant to recommend a change in the allocation of teaching resources as proposed - the board estimates that class size changes would involve a minimum of 50 to 60 additional teachers (a calculation that was not disputed by the Teachers, whose own estimate was 53 additional teachers). In discussing the weighting factor, the Teachers admit that estimates of additional teachers are difficult to establish; hence, the exact number of teachers needed is not known. The Board estimates that the weighting proposal for a triple grade would result in the need for an additional 9 teachers and that if all estimates are added together, the personnel implications are startling. The fact that the Teachers have been unable to calculate the impact of some of their proposals is a serious deterrent for any Fact Finder to make a substantive recommendation. It is not sufficient to have fears and concerns without being able to translate these into reliable figures which would, therefore, show the long-term costs to the Board. More data and study are needed by both the Teachers and the Board regarding the implementation of the requirement of Bill 82 before proposals requiring the hiring of additional teachers should be entertained.

Therefore, while recognizing the Teachers' concern for increased workload and the difficulties surrounding the delivery of special education services to the varying kinds of students, the Fact Finder does not recommend the changes as proposed by the Teachers in 19.02 at this time.

b) Pupil-Teacher Ratio (PTR) and Staff Allocation

Staffing is, without doubt, one of the most complex and emotionally charged areas in teacher/school board bargaining. It is inextricably tied to a range of sensitive issues including: the concept of accountability to the electorate, ability-to-pay, management rights, quality of education, job security, teacher workload, and teacher professionalism.

Approximately two in every three fact finder reports in 1982-83 contained one or more staffing isues. The range of issues included (but were not limited to):

- a teacher request to move the pupil-teacher-ratio (PTR), which was currently outside the collective agreement in a Letter of Intent, inside the main body of the agreement (Timmins Secondary)
- a teacher request to reduce the existing PTR (e.g. Halton Elementary, Norfolk Elementary, Carleton Secondary, Durham Secondary, Halton Secondary, Ottawa Secondary)
- a board request to increase the PTR (e.g., Timmins Secondary, Welland RCSS)
- a teacher request to amend the PTR to include a separate PTR for special education (Timmins Secondary).
- a demand to alter the method of calculating the PTR, e.g. by excluding from the calculation principals and vice-principals, remedial teachers, resource teachers, etc.

- requests to switch to, or add staff allocation formula which in turn, would require the hiring of extra guidance teachers, resource staff, special education teachers, etc, and/or request to determine the allocation of staff to the various schools in the board. (e.g., Bruce Secondary, Carleton Secondary, London Secondary, Sudbury Secondary).
- proposals to change staff allocation criteria (Carleton Secondary)
- the addition of staff allocation formula for positions of responsibility (Carleton Secondary, Ottawa Secondary, Sault Ste. Marie Secondary)
- demands for extra staff (beyond that called for by the PTR) for small schools suffering from declining enrolment (Renfrew Secondary).
- requests to establish a parallel or separate set of PRT's to be used in the event of declining enrolment. These PTR's, which were more liberal than those used for actual staffing, would be invoked when declining enrolment caused a need for teacher lay-offs (Timmins Secondary).

For a detailed analysis and examples of PTR and staff allocation formulae see ERC Clause Files No. 21 and 22. For an analysis of bargaining trends see Provincial Overview, June 1983, p.2. For a board by board comparison of actual PTR's for the years 1976-82, see ERC Monograph No. 30. Monograph No. 27, Interest Arbitration, (pp 37-40) analyses the way arbitrators have dealt with PTR and staff allocation issues.*

Over the years, fact finders have developed criteria for determining the merits of proposed changes to the agreement. These criteria include the following:

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*Clause File No. 21, Staff Allocation Provisions, 1981-82
Clause File No. 22, Pupil Teacher Ratio Provisions, 1981-82
Monograph No. 30, Pupil Teacher Ratios, 1976-1982

1. The burden of proof falls on the parties to convince the fact finder that changes to the collective agreement are justified; fact finders, generally speaking, require evidence. If no compelling evidence is presented, or conflicting factual information is involved, fact finders usually recommend a continuation of the status quo, or the formation of study committees to get at the facts.

2. Moreover, fact finders often insist that a party must demonstrate that a meaningful problem exists. Mere speculation or fear about a potential future problem is not considered to be a sufficient rationale; a pressing need for change must be demonstrated.

3. Since the impact of improved working conditions on the quality of education is still judged by many to be inconclusive, fact finders (and arbitrators) have emphasized the importance of other factors, such as the economic costs. Most fact finders require the parties to fully explore the economic costs involved before they are willing to make suggestions for change.

4. The issue must be a priority item. If it is a low priority issue fact finders generally recommend that it be withdrawn from the table, particularly if it is perceived to be impeding the negotiations process.

5. Most fact finders prefer to avoid making innovative recommendations; setting new trends or altering existing historical relationships is usually considered to be the parties' responsibility.

6. Fact finders frequently recommend that the parties withdraw an item and place it on the agenda for subsequent negotiations if the proposed change would come into effect too late in the school year to have a meaningful effect on working conditions.

7. There is a reluctance among fact finders to offer recommendations where the parties are willing to make changes and have demonstrated, over the years, an ability and desire to find consensus.

Four examples have been selected from 1982-83 fact finder reports to give some idea of how staffing issues are dealt with in the fact finding process. In the first selection, R. L. Jackson provides an excellent introduction to the fundamental problems facing the parties to a dispute on staffing. In addition, Mr. Jackson presents more articulately and more forcefully than any other, a philosophy of collaborative problem-solving; a philosophy he feels is more conducive to resolving complex staffing problems. The second selection, taken from Eric Runacres' Bruce Secondary report, is another example of using collaborative problem-solving. There are situations, however, where the use of collaborative methods (such as on-going advisory committees, ad hoc exploratory or fact finding committees) have been tried by the parties and have been unsuccessful. In the third selection, David Whitehead tries to assist the parties by recommending several ways in which the adversarial bargaining process might be structured to finally resolve the dispute now and at the table. In the final selection, by Anne Barrett, the fact finder uses data to analyse the situation and offers to the parties a specific recommendation on PTR. This example is very similar to that taken by arbitrators; it is more of an adjudicatory approach to resolving the dispute than the other three examples, which tend to be more accommodative and process (rather than content) oriented.

CARLETON ELEMENTARY - R. L. JACKSON

Articles 16, 17 and New Staffing, SAWCC, Principals and Vice-Principals

The teachers have a multi-faceted and complex set of proposals with respect to staffing. In brief, they are as follows:

1) that the existing concept for staffing be left essentially intact;

2) that the PTR be substantially reduced;

3) that special provisions be made to adequately accommodate the requirements flowing out of Bill 82;

4) that the formula used for staffing the schools (ESSR) be included in the collective agreement;

5. that provision for lunch and preparation time be included in the agreement;

6. that the Staffing and Working Conditions Committee (SWACC) actually make the allocation to schools rather than simply act on a consultative basis as it does now;

7. that any changes to working conditions would require the written agreement of TFC [Teachers Federation of Carleton];

8. that deployment, redundancy procedures for principals and vice principals and release time for vice principals be stipulated in the agreement.

These are self-evidently, complex and far-reaching proposals, and reflect the teachers, deeply held concerns about problems in the system. A fact-finder runs into these wherever he/she goes in the province and, in my view, there is no more troublesome or frustrating area. On one hand (and I am speaking generally here), the teachers claim that their workload is increasing, that they are called upon to fill a wide variety of new roles, that the imposition and implementation of new programs, not to mention Bill 82, have created a host of staffing problems and distortions which, in turn, bring disadvantages to teachers and waste to the system. On the other hand, boards point to the PTR which is not out of line, cite the seemingly large number of special education teachers recently hired to cope with Bill 82 and generally claim that things are not as bad as the teachers are alleging. (To reiterate, the arguments cited above, from both sides, can be heard -- to varying degrees -- in virtually every set of teacher-board negotiations and are not meant to apply only to Carleton Elementary.)

A third party is faced with such a mass of data and conflicting claims and perceptions that time does not allow for analysis to be conducted to the necessary degree of detail. Items such as the staffing problems of a school system can be done adequately only by people who are thoroughly familiar with the situation and can deal with it over an extended period. In such areas a fact-finder can only hope that some general recommendations may be of some help to the parties.

There is a more important conclusion flowing out of the above observations, however, and that is that the bargaining table is the wrong place to be addressing such problems. Problems which are as complex and sophisticated as these are most susceptible of solution when addressed by a small group of well-informed people, working with valid data on which all interest groups agree, in a non-pressurized atmosphere and applying in a flexible and imaginative manner their intelligence and creativity. It is hard to imagine a forum and process further removed from the above ideal than the bargaining table which, of necessity, is at least partly adversarial in nature, and where outcomes can be and often are the result of crude tradeoffs under high pressure.

What is obviously indicated is joint consultation which, indeed, exists and, to varying degrees across the province, works. Why, then, do such issues continue to appear on almost every bargaining agenda? In general, where consultation does exist, in dealing with such matters it can work only within the parameters imposed on it by the collective agreement--for example, in staffing problems, it is constrained by the PTR. Thus, all of the work and creativity of a joint consultation process can come to nought in the irrationality of a collective bargaining outcome.

Both parties (and I am still speaking very generally) are responsibile for this situation by their insistance on anchoring such issues in the collective agreement and both, or course, have the same reason for doing so: their own protection. Teachers, on one hand, claim they want the security of knowing the procedures will be followed; boards, on the other hand, argue that to give a joint consultation committee the right to actually determine such things as the PTR would be to simply transfer bargaining for positions from the negotiation table to the joint consultation process and to abdicate their management responsibility in the bargain.

This case illustrates this dilemma very well. The parties have a joint committee (SAWCC) which, by all accounts, seems to have worked well and to have come up with some innovative and worthwhile solutions to thorny problems. The teachers, for their part, are now requesting that the staff section of the agreement be greatly expanded and that the SAWCC be granted much broader powers, which would be stipulated in the agreement. The Board, on the other hand, argues that meaningful consultation now exists but that it (the Board) "is not prepared to continue to invest time and money in the process which on its face has its parameters and determinants affected by precise language in the collective agreement." I would agree with this statement but would point out that it could be argued that that is exactly what the Board is doing in insisting that the SAWCC must do its job within the determinant of the PTR--itself a key element of the collective agreement.

I thoroughly appreciate that the suggestion implied by the above, that a joint committee be granted the power to determine PTR, appears appallingly naive. Nonetheless, true consultation involves considerable risks for both parties and it is at least interesting to speculate whether or not such an extreme form of consultation could actually work. For it to work, and to survive, both parties would have to fundamentally reorient their thinking: the Board would have to put out of its mind the concept of "management rights" in regard to staffing, while the teachers would have to resist the overpowering temptation to use the joint consultation process as a vehicle for furthering their own ends and simply increasing their numbers.

Given the realities of collective bargaining, current attitudes and legislation, this is obviously not going to happen. This is too bad because, in my view, the further staffing and working conditions are pushed into the collective bargaining forum, the less satisfactory (for both parties) will be the outcomes. In addition, these issues will be countinuing sources of irritation and problems which, themselves, will spill over into and affect bargaining detrimentally. I believe, too, that they cannot help but have a corrosive effect on the relationship and the parties' feelings for each other.

In my view, this is doubly unfortunate because both parties are sincere in their perception and arguments while collective bargaining almost forces each of the parties not to accept what the other is saying. I know that teachers today are faced with a very different work environment than were those of 15 or 20 years ago. I realize, too, teachers are asked to perform many roles for which they were not hired and were not trained, equipped, or paid; they are asked to perform these roles not only by boards, but by parents who have in many ways abdicated their own responsibilities, by frequent changes in curriculum, changes in society, and by the students themselves. I well appreciate that teacher stress and burnout is not a figment of someone's imagination. Finally, I appreciate too that the public's view of teachers is often uninformed.

I believe that boards, too, are equally sincere in their perceptions and, as much as the teachers, victims of a system which forces them to address what in reality are joint problems as issues in the adversarial atmosphere of bargaining. They see themselves as holding heavy responsibility and as acting, in trust, on behalf of the public with respect to a key function of society. It is not easy to come to grips with the problems of education when one is forced, by the system, to do so in an adversarial mode because it is not easy to perceive reality when being confronted by an adversary.

The above philosophy may not be of much help to the parties, but it does reflect an outsider's view of, and frustration with, an approach to the sensitive and complex problems of school board staffing which has a build-in mechanism which will ensure that the problems are never to be solved. I have no solution which would ever work in practice and, for reasons already set out, will not make any recommendations with respect to staffing, SAWCC, Principals or Vice-Principals. I would strongly encourage the parties to go as far as they can--as far as they dare--further down the road of meaningful consultation. This seems to me to be a relationship where something worthwhile has been accomplished and where considerably more might be done in the future.

BRUCE SECONDARY - E. RUNACRES

One of the most crucial and complex procedures undertaken by any educational system is the determination and allocation of staff to meet the educational needs of the students. Many approaches have evolved over the years; each attempting to fairly and equitably meet the increasing demands of the composite school curriculum. Recent developments, translated into curriculum requirements, in the field of Special Education is but one immediate example of this difficult situation.

Of the many factors involved in a staffing-formula equation Bruce County's Collective Agreement includes only two; - a gross pupil-teacher ratio (PTR) and teachers work-load factor. The Board has made a proposal this year that does define the PTR more satisfactorily; using terms that are typical of the best formuli.

The Branch Affiliate, in recognizing the complex factors involved in staffing, has brought forward a number of concerns to the bargaining table. These include:

- the need for a mutually acceptable system of allocating and monitoring staff according to the Collective Agreement;
- the need to consider additional educational factors in the staff allocation formula (e.g. librarian, guidance);
- the need to review the role of the Administrative Assistants versus pro-rated Vice-Principals;
- the need to base the educational program offerings on the expressed needs of students choices;
- the need to clarify the intent of the present Article XIX dealing with the aspect of maximum assigned time.

These are all legitimate concerns and naturally both parties recognize the need to devote much effort to obtain the most educationally effective and financially sound means of staffing the schools. This is where the action is. There is probably no other more vital area for trustees, teachers and student cooperation.

Bruce County has a unique problem. Some of its secondary schools are too small to be cost-effective while attempting to provide the programs requested by the students. The modern Composite School program requires schools with enrolments of 1000 +- 200 to be in any way cost-effective. This is the upper limit in Bruce County; some schools are under 200 students. This poses great difficulty. If the Board offers the small schools a complete program or anything near it, then the PTR has to drop dramatically; this is expensive in a labour-intensive system. If the PTR is not dropped then class sizes must increase dramatically; - and thus the students and teachers suffer. Quite a dilemma; there has to be a balance of factors.

The Branch Affiliate has clearly defined some of the needs extant in the current situation and they make a strong case for the opportunity to assist the Administration in meeting these needs. They stress that they do not wish to "dictate" but to provide useful "input". Their present proposal is to establish a staff allocation committee composed of Principals and Affiliate representatives. This committee would then advise the Administration of the staffing needs of the schools. The Board is naturally concerned that they are being asked to turn over this area of important decision-making to "the staff". I would support the Board's concerns. However, there is "right" on both sides. Before any changes are made in the Collective Agreement a great deal of study needs to be made into the alternatives that do exist to resolve all the difficulties mentioned above.

The staffing formula used by the system is inadequate to embrace the staffing requirements. There are a host of factors that should become part of the formula equation. At present the PTR, at 16.8:1 plus or minus .1 is above the provincial median (under 16:1) and class size and/or programs are adversely affected. It should be pointed out to the parties that whatever formula is ultimately devised the Board can control the total number of teachers (gross PTR); they can adjust the right-hand-side of the equation factor by factor in order to retain the gross number of teachers they can afford. To argue that a sophisticated comprehensive component staffing formula automatically increases staff is spurious.

I am making a case that this process is very difficult and complex. That it is one of the most vital areas of educational decision-making. I would not recommend that the Board turn over its responsibilities to the Affiliate; but I would recommend that they recognize the need and the fairness of involving the staff in this important operation.

Recommendation:

That the Board establish a sub-committee of the Advisory Management Committee (recommended) in order to:

(a) review the educational program needs of the schools;

(b) establish the cost of factors involved;

(c) investigate the various staffing formuli that are in use throughout the Province;

and

(d) develop a Component Staffing Formula for Bruce County;

(e) present its findings to the Board for consideration and possible inclusion in the Collective Agreement.

CENTRAL ALGOMA SECONDARY - D. WHITEHEAD

Staffing issues are among the most difficult issues to handle effectively in negotiations and are extremely difficult issues for third parties such as Fact Finders to get a sufficient handle on to be able to offer useful advice on content to the parties.

In the present situation, the parties have tried over a number of years to resolve the issues of staffing and workload but without success. These issues remain amongst the most difficult unresolved issues in this round of negotiations.

The recent history of negotiations on these issues is as follows. In the 1979-81 agreement, a pupil/teacher ratio of 16.6/1 was set out with the Board agreeing to employ one or more teacher than required by this ratio. Should actual enrollment on October 1 deviate by thirty or more students from the enrollment projections of April 15 on the basis of which staffing decisions were made, "the Director of Education will take action deemed necessary to restore the ratio," with possible release of surplus teachers to be effective December 31.

In addition, the parties also agreed in the 1979-81 collective agreement to establish a joint Board-Affiliate Advisory Committee to monitor class size and make recommendations to the Board regarding modification of the application of the pupil/teacher ratio or the modification of class sizes considered to be detrimental to optimum learning and teaching conditions. In negotiations for the 1981-82 agreement, the parties agreed to a "moratorium on the negotiations of Article IX for the contract year 1981/83: and the formation of a joint committee to "look at all items of concern growing out of Article IX." The committee met a number of times and issued separate recommendations, one set from the Affiliate representatives and another set from the Board Representatives. These recommendations, as I understand it, became the basis for the positions tabled by the parties in this round of negotiations.

A number of points need to be made on this question:

(1) Both parties agree that the existing practice of the Board in the matters of pupil/teacher ratio and class size is satisfactory to all involved.

(2) With regard to the future, the Board feels that it requires flexibility in the areas of class size and staffing, especially given the fact that it is managing a one-school secondary system.

(3) With regard to the future, the Affiliate feels that it requires more written guarantees that changes with adverse consequences in matters of class size and staffing will not be made, especially given the fact that it is involved in a one-school system.

(4) The parties tried, without success, to resolve these differences using several alternatives such as (a) specifying a pupil-teacher ratio in the collective agreement and forming a joint Board-Affiliate Advisory Committee with recommendatory powers on matters of class size; and (b) forming an ad hoc joint Board-Affiliate committee to look at all items of concern growing out of Art. 9.

(5) Both parties have emphasized the preliminary nature of their positions now on the table and the fact that discussion at the table on these positions has been extremely limited.

In my view, both the Board and the Affiliate have legitimate concerns in the area of staffing and class size. Given the projections of declining enrollment over the decade of the 1980s and the limited flexibility afforded by a one-school system, it is obvious that the Board would feel that it absolutely requires sufficient flexibility to manage the system in the uncertain future. However, it is equally obvious that in this same situation, the Affiliate would feel it absolutely requires increased protection for its members.

Given (a) the difficulty and complexity of these issues, (b) the importance of these issues to both parties, (c) the documented failure of alternatives to the bargaining such as on-going advisory committees and ad hoc exploration committees in this situation, and (d) the absence of thorough discussion by the parties of the positions now on the table, I recommend that the parties continue to negotiate Art. 9, on this basis or a recognition of the legitimate concerns of the other party on these issues, with the aid of a mediator and the use of a side-table with, at most, two representatives from each party assigned.

It would be my hope that the use of a smaller sub-committee within a bargaining framework would allow intense discussions by knowledgable people within a limited time period. This procedure could produce a workable compromise to be endorsed by the full teams of both parties.

DURHAM SECONDARY - ANNE BARRETT

Item 5.17 - Staff Complement and Pupil-Teacher Ratio

Durham Secondary Schools have a relatively high Pupil-Teacher ratio. The average Pupil-Teacher ratio in Ontario on September 30th, 1981, was 16.4 to 1. Durham's PTR was the highest in the Golden Horseshoe last year and the fifth highest in the province. For five years from 1976 to 1980-81, Durham's PTR was constant at 17.87:1. The PTR was reduced for 1981-82 to 17.44:1, but as the contract was settled in March 1982, I can only assume that the negotiated PTR was merely a reflection of the de facto situation. In the present contract the PTR for 1982-83 is set at 17.23:1.

In this contract the Teachers wish to lower the PTR to the provincial average of 16.4:1. In my opinion the Teachers have a valid negotiating goal in attempting to bring their PTR closer to the provincial average.

Bill 82, which I have mentioned earlier in this report, places a duty on School Boards to provide greatly increased and expanded programs in Special Education over the next five years. The Ministry is subsidizing this Special Education Program by separate allocations of funds apart from the regular school budgets. Up until a few days before the Fact Finding Hearing, the Teachers had not received the Board's "Special Education Plan" which it was required to provide to the Ministry outlining its five-year plan for Special Education. The Teachers now have the "Plan" and I have had an opportunity to review it as well. It appears that a large number of teachers and support staff are to be hired within the next five years to implement the Plan.

The Teachers want a guarantee in the Collective agreement that these additional teachers will not be included in determining PTR, thus further raising the PTR beyond acceptable rates. The Board is reluctant to commit itself in this regard although their "Plan" shows that they intend to hire many additional teachers. The Teachers have requested that a Staffing Committee be established to discuss the implementation of the Special Education Plan and they have requested a Letter of Understanding from the Board setting out the terms of reference for this committee. The Board has agreed in principle to the committee but is reluctant to provide a Letter of Understanding until the PTR issue is settled.

I do not believe these additional teachers can or should be included in PTR and this committee should be able to reword this clause to delete the appropriate persons from the PTR formula. It is true that the infusion of new Special Education teachers should relieve some of the burden of the regular classroom teachers. However, I was not persuaded by the Board argument that 17.23:1 is an acceptable Pupil-Teacher ratio, or that in fact it should be raised to 17.6:1 on the "poor economy" rationale.

I therefore recommend that the Pupil-Teacher ratio be reduced to 17:1 for the 1983-84 school year and that Special Education teachers be excluded from the formula in computing PTR.

SURPLUS/REDUNDANCY

Virtually every agreement in the province contains a surplus/redundancy provision; many of which extend for 10-15 pages. (For a thorough analysis of these clauses, see Clause File No. 12, Surplus/Redundancy).

In 1982-83, many of the issues which came to fact finding involved "fine-tuning" existing procedures.

a) Seniority

Generally speaking, Teachers prefer to use seniority as the primary, if not only, basis for determining surplus/redundancy. They prefer this method to others because they feel it is objective, and avoids the heated debates, and in some instances, the possible abuses, of more subjective methods. The school boards, on the other hand, are concerned about the quality of education, program viability and delivery. Consequently, they would prefer to use qualifications and teaching effectiveness as factors to be used in determining surplus/redundancy. In program areas requiring special qualifications, the Boards would like to see qualifications supercede seniority provisions (see, for example, Muskoka Secondary, Ottawa Secondary, Timmins Secondary, Norfolk RCSS). Fact finders, as a rule, tend to leave the resolution of this issue in the hands of the parties.

The method of calculating seniority can also become an issue. Since declining enrolment has pretty well worked its way through the elementary schools and is now having maximum impact on secondary systems, the elementary teachers have become concerned that teachers found surplus to the secondary system may choose to "bump" or displace an elementary school teacher with less experience. To protect their members, the Branch Affiliates in the elementary panel are demanding that seniority be calculated on the basis of teaching experience with the panel, as opposed to Board-wide experience.

Another problem in regard to seniority is how part-time teaching is calculated for purposes of establishing rankings on the seniority list. This issue came up twice during fact finding in 1982-83. Richard Jackson, fact finder for Carleton Elementary, describes the issue, and the implications it holds, in his opinion, for the school system:

> "The teachers here are proposing that the definition of seniority be amended so that permanent part-time teachers accumulate seniority (in proportion to actual time taught) as opposed to the current in which seniority is accumulated at the same rate as full-time teachers, regardless of time taught. The teachers argue that the current system potentially disadvantages full-time teachers because such an individual could find him/herself replaced by part-time teachers who had accrued more seniority with less actual teaching time. The Board, on the other hand, argues that to grant the teachers request would be, in effect, to inexorably move all part-time teachers down the seniority list and expose them to jeopardy of layoff.
>
> The argument advanced by the Board, that such a clause would require the maintenance of two seniority lists, is not compelling, in my view. The real issue here is whether part-time teachers should earn the protection afforded by seniority on the basis of actual time taught or on the basis of years put in, even if part-time. An examination of the philosophy of seniority is not of much help here because it is up to the parties to fashion their own definition in each case. One argument that is germane, in my opinion, is the contribution to the system of the part-time teacher. In any board, but particularly in one as dispersed as the Carleton Board, and particularly now with the proliferation of programs, part-time teachers add a dimension of flexibility to the system from which both the Board and the teachers benefit. Further, it is in the teachers' own interest to be able to switch from full to part-time status, and not have to pay a penalty in terms of job security to do it. In a sense, the same arguments that the teachers advanced with respect to maternity benefits can be applied to this question: an increasing number of people--women and men--will be temporarily stopping work or, just as likely, switching to part-time status in order to raise families. In my view, the parties should not build any more disincentives than necessary to an increasingly important element of flexibility in the system. Accordingly, I recommend that this suggestion not be included.

In Durham Secondary, where Anne Barrett was fact finder, the teachers adopted the opposite position, i.e. they wished "to have part-time teachers given credit for a full year of seniority for purposes of redundancy provisions of the contract." In this case, according to Barrett's report, the Board resisted such a change, arguing that there were no redundancy problems in Durham, and furthermore, in their opinion, "it is not fair to equate part-time teachers with full-time teachers in this way".

Barrett's recommendation was as follows:

> "I am not persuaded that a problem exists which needs to be remedied or was I persuaded of the fairness of this proposed change. I would therefore recommend against its inclusion in the Agreement".

b) Options Open To Surplus/Redundant Teachers

Once a teacher has been declared redundant, there are several options which may be open to him/her. These options include (but are not limited to): placement in a permanent supply pool, retraining, sabbatical leave, priority recall and severance pay.

i) Permanent Supply Pool

Thirty percent (30.0%) of the 160 collective agreements on file with the Commission as of June 1983 have a provision for permanent supply. A breakdown by panel is as follows: elementary, 34.8%; secondary, 45.3%; RCSS, 2.4%.

Most permanent supply provisions limit the time period to one year or less. In some cases it may be extended to two years if a teacher is involved in a retraining programme. Most provisions also limit the number of teachers who may be on permanent supply. In at least one instance, the pool is limited to one teacher per school. For examples of clauses, see Clause File No. 12, Surplus/Redundancy, 1978-79.

Permanent supply teaching was an issue in 2 of the 49 reports studied. In one case (Durham Secondary) the teachers were requesting the insertion of a permanent supply provision, in the other (Ottawa Secondary), the teachers were asking the board to amend the present clause to accommodate all permanent and probationary teachers who are declared redundant for either one or two years depending on status. In both instances the fact finder recommended the status quo because the teachers could not show sufficient cause for change.

ii) Job Sharing

The issue of job sharing came up only once in 1982-83 fact finder reports. Graeme McKechnie, fact finder for Ottawa Elementary, describes the problem as follows:

> The Teachers propose deleting the dates in this article; however, the Board proposes new dates and a change in concept. In 1981-82, the job-sharing letter stated that there would be a program of job-sharing for the school years 1981-83. The language chosen by the parties clearly implies a two-year program. The Teachers now propose to delete the dates so that job-sharing will become a continuing program. The Board, however, recommends that programs of job-sharing be identified in two-year terms - 1981-83, 1982-84, and 1983-85. Further, the Board proposes that once accepted into a two-year job-sharing term, the teachers retain the right to revert to a full-time status by the end of the two-year term and that failing to do so, the teachers will remain on part-time status with no rights to return to full-time status. Both parties state that the program is apparently successful. However, the Board's position is that it does not want a large unfunded liability of part-time teachers who, at some point, could exercise their perogative to return to full-time teaching. The Board would then have to find full-time positions for them. The Board indicated that the teacher could go on more than one two-year term; however, these terms could not be consecutive. Further, by limiting the programs to two-year terms, the Board accepts this as a negotiating item rather than an open ended item. The Teachers argue that the plan has been proceeding without difficulty and there is no particular reason why it should be changed now.
>
> In terms of personnel planning, the Board proposal seems reasonable and the Fact Finder recommends that the parties adopt the concept of two-year plans but consider one change - that a teacher be allowed to take a consecutive term, once only. This does not seem to damage the manpower planning aspect

and, in any event, under the terms of the plan, the Board can deny such a request if the program needs would not be met. The Board also proposes to add a note that part-time or job-sharing teachers should not be placed in the primary grades. The rationale for this is drawn from information from superintendents that continuity of a full-time teacher is necessary in primary grades. The Teachers argue against this, stating that principals have not given them this kind of evaluation. The Fact Finder cannot solve this particular discrepancy in information and would suggest that both parties return to their sources and continue the discussion.

iii) Recall

Priority recall is the option that is most frequently offered to teachers declared surplus/redundant. According to Monograph No. 26, Historical Analysis of Collective Agreements, recall procedures are found in 87.6% of the collective agreements on file with the Commission for 1981-82.

Recall procedures extend to teachers on lay-off, first priority for filling vacant positions (see Clause File No. 12, Surplus/Redundancy, 1978-78, for the details of procedures).

One of the questions which arose in the London Secondary fact finder's report was: what type of contract should the teacher be placed on when recalled for teaching duties? Alan Harries described the issue as follows:

> At the present time if a teacher has been declared redundant and is recalled after the first day of school, then that teacher is placed on a new probationary contract. If the teacher is recalled before the first day of school, then the teacher, if applicable, would be on a permanent contract. The Teachers view this as inequitable as a matter of days or weeks could determine significantly a teacher's financial and teaching status with the Board.
>
> I am in agreement with the Teachers. It does appear unfair that the teacher who is recalled on the Friday prior to the opening of school is in a markedly better position than a teacher who is recalled on the day after school opens. Within certain defined time considerations, the teachers should be treated alike. I am not going so far as to say that if a redundant teacher is recalled the following February, that he should be treated the same as the teacher who was recalled in the first week of September, but, bearing my comments in

mind, the Parties should further address this issue. To clarify this further for the readers of this report, the importance is that a teacher on permanent contract when declared redundant is entilted to one year's pay. A probationary teacher is not so entilted.

iv) Severance Pay

Severance pay (also referred to as separation allowance) is becoming more common in teacher/school board agreements. According to the March, 1982 Provincial Overview, 38.6% of the 142 agreements on file for 1981-82 contained a severance pay allowance. In the secondary panel, where the effects of declining enrolment are presently having their greatest impact, nearly 60% of the agreements have such a clause. For a detailed analysis of separation allowance provisions, see Clause File No. 18, Separation Allowance Provisions, 1980-81.

Severance pay was an issue in two reports during 1982-83. In Central Algoma Secondary, the Board was proposing to remove severance pay provisions as a cost-saving measure. The Affiliate proposed retaining the existing clause. The fact finder noted that "To date, the parties have no experience with secondary teachers being declared surplus, nor is any difficulty in the area likely for 1982-83." As a result, the fact finder recommended "that the existing provisions for severance pay be included in the agreement as proposed by the Affiliates."

Whereas in Central Algoma the teachers were trying to maintain the existence of a previous benefit, in London Secondary, the teachers were trying to gain a new concept of severance pay. Alan Harries, fact finder, writes as follows:

> The Teachers are also proposing a form of severance pay in Article 23 being basically the number of accumulated sick days to the maximum of 200. The Board finds this concept totally unacceptable, although precise reasons were not given. Of course the import of this is that teachers, upon severance from the Board, would be paid for acculated sick leave.
>
> In effect it is a mini retirement gratuity. Once again this may have considerable monetary significance to the Board and

as it is a totally new concept, it must be negotiated and decided by the Parties in their list of priorities.

c) Tenure

There are very few collective agreement in the Ontario public school system which provide complete job security. Sault Ste. Marie Secondary is an exception. For this reason it is interesting to look at how a fact finder recently dealt with a school board's request for the removal of job tenure. Here is how Doug Belch described the issue:

> Under the present contract, tenure is assured for all Teachers under continuous employment with the Board who are holders of a permanent contract. Continuous employment is defined as employment during the period of unbroken service under contract, inclusive of paid leaves and unpaid leaves, up to two years.
>
> The Board wants the provision concerning tenure deleted from the existing contract. It states that when one considers declining enrolment in the regular elementary schools and the fact that retirements or resignations do not equal the reduced staff requirements, the taxpayer in Sault Ste. Marie is required to carry an unnecessary burden as long as tenure is in place. It feels that during a period of restraint it is an imposible situation to deal with and that the Board must be able to staff according to requirements without the burden of carrying surplus Teachers.
>
> The Board during the hearing pointed out that in the past it has tried its best to protect the staff but it is now reaching the stage where the situation is critical. It pointed out that for next year after looking at attrition and leaves, as many as twelve to fifteen teachers may have to be reduced. During the hearing, the Board gave the following statistics, that the "overall" P.T.R. for 1981 was eighteen point two (18.2) and for 1982 was eighteen point one (18.1) and that the "in-school: P.T.R. was for 1981 nineteen point one (19.1) and for 1982 eighteen point nine (18.9).
>
> The Teachers were opposed to the Board's request for the deletion and during the hearing questioned the Board officials and brought out the fact that as of January 1, 1983 the Board contemplates no reductions to staff on permanent contracts and there are still Teachers employed by the Board on probationary contracts, although these are largely in the area of French Immersion and Core French programmes. It was also brought out that there was no study to determine the impact of reducing the Teachers and the resulting P.T.R.

> The Teachers emphasized that declining enrolment has been with us for some time now but actually appears to be levelling off. They want to know why tenure is suddenly an issue.
>
> RECOMMENDATION
>
> From the evidence presented at the hearing, it did not appear that tenure was a pressing problem for the negotiation of this Collective Agreement. Also, to simply remove tenure from the contract, without substituting some other formula for security, did not appear to be fair. If the Board wishes to have tenure removed there must be more forceful data presented as well as an alternative concept.

In Fort Frances-Rainy River Secondary, the teachers were trying to insert absolute tenure. Here is how the fact finder, Alan Harries, dealt with the issue:

> The Teachers have replaced article 14 with a tenure clause which states that the teacher may be dismissed by the Board soley for reasons of proven incompetance or moral turpitude. The removal of program or the decline of school enrolment is not grounds for dismissal. The Teachers justify this position stating that if program is cut, then the students will have fewer options to choose from and their needs will not be met. If teachers' contracts are terminated, then teacher moral will decline which will ultimately pervade the classroom. The Board flatly states that it is not prepared to include this concept in the contract.
>
> I am not aware of any other Board in the province which has included in the contract absolute tenure for its teachers. Declining enrolment is not a problem with this Board and when one has regard to the economic climate in the country, it is difficult to justify the retention of teachers who may be bona fide surplus to the system at some point in the future. Accordingly, I recommend that the Teacher's proposal not be included in the contract and the parties resolve on their own the small differences that there are with respect to the current redundancy clause.

The issue of absolute tenure also came up in Ottawa Secondary with regard to school closures. The fact finder, Graeme McKechnie, had this to say:

> This is a Teacher proposal which states "the employer will assure that no teacher will suffer a loss of tenure, economic welfare, position of responsibility, rights, privileges, advantages and obligations or association with the Board or

Branch Affiliate because of the school changing its status."

The article also requires the involvement of the Consultation Committee in the event of school closure. At the fact finding hearing, the Teachers discussed the sale of Sir Wilfred Laurier School and indicated that there had been insufficient consultation with the Federations and the Federation had been advised after the fact.

The Board objects to this article since it tells the Board how to manage the school system. Also, the Board was angered that the Teachers stated that no consultation had taken place with respect to Sir Wilfred Laurier School, stating that consultation had taken place and the Teachers had been a component in the decision making process. The board indicated that without any legal obligation to do so, it had gone a long way to protect the right of the affected teachers in theSir Wilfred Laurier School situation. The teachers' clause in the Board's view would make it impossible for the Board to move into new areas and/or out of old ones as the situations dictate.

In the Teachers' view the Collective Agreement must cover any eventuality although the Teachers after some discussion agreed that the Board had consulted and taken the Teachers rights into its decision making process in the case of Sir Wilfred Laurier School.

There is no question that teachers and support staff are affected by school closings. This contract has a well developed tenure clause, and a well developed consultation process. The proposal put forward by the teachers would restrict the Board's operations in ways that would not serve either Board or Teacher groups. The Fact Finder does not recommend inclusion of this clause in the Collective Agreement.

d) Early Retirement Incentive Plans

In order to dampen the negative effects of declining enrolement, elementary and secondary school teachers have been actively trying to persuade school boards to accept the idea of early retirement incentive plans. The Teachers propose that older members be paid a lump sum of money as an inducement to retire early. This payment would partially compensate the teacher for the penalties he or she would incur to their pension for leaving the profession early. The Teachers argue that these plans would not only open up positions for young teachers who have been, or might be, found redundant, but the plan would also assist the school boards with cutting down costs, as the younger teachers, in all liklihood, would be paid at rates much lower than the older teachers who are likely to have many more years of experience. The Teachers also claim that an early retirement plan can even be useful in areas that do not, or no longer, suffer from declining enrolment. As Alan Harries relates in his London Elementary report: "The teachers state that because of financial considerations, teachers are now remaining in the profession past their 90 factor. Because of this, older teachers remain in the system longer than they wish and few new teachers are brought into the profession". The implication is that these teachers, who remain in the system for reasons of necessity rather than choice, may be performing at levels less than the optimum. Accordingly, the quality of education might be improved if openings were made for dedicated new teachers who have fresh ideas.

The school boards, on the other hand, strenuously object to adding to or extending early retirement plans. Their various arguments are set out below:

1. The problems of redundancy have already been resolved in their particular board.

2. The teachers already have excellent superannuation and retirement gratuity plans, and therefore are not justified in receiving more.

3. Since, in practice, teachers typically retire prior to 65, an early retirement incentive would only be a windfall to them.

4. It is not necessarily the highest paid teachers who retire early and it is not axiomatic that the lower paid teacher is hired to replace them.

5. In any event, the boards question whether there would be any savings from the early retirement of a teacher in Categories D, C, and B if a replacement is required.

6. As a matter of principle, some boards are set against "paying a teacher for not working."

7. There may be legal obstacles to the plan: a) Section 150 of the Education Act limits retirement gratuities to one-half a year's salary; and b) an early retirement based upon age may contravene the Human Rights Code.

In response to some of these criticisms, the teachers appear to have softened their position in an effort to strike a compromise. The Muskoka Elementary and Durham Secondary teachers, for example, have proposed the board have discretion to refuse early retirement incentives where they can not realize a cost savings. The Sault Ste. Marie Secondary Teachers, who already have an early retirement incentive plan, but which is limited only to times of teacher redundancy, are asking to extend the plan beyond these restricted times, but "at the discretion of the Board and contigent upon finding suitable replacement for the teacher applying for early retirement incentive." (see Alan Harries, Sault Ste. Marie, Secondary).

Fact finders have adopted various positions: 1) to recommend the adoption of some form of early retirement plan. This has been the stance taken by only one fact finder - Alan Harries (see Fort France-Rainy River Secondary, London Secondary Norfolk Elementary); 2) to support, in principle, the concept of an early retirement plan, but pull up short of recommending one "at this time". The basis for this type of recommendation may be due to legal and practical uncertainties about the workings of a proposed plan (Anne Barrett, Muskoka Secondary); the need for such a plan is not immediate and therefore there is still time for further joint study of the issue (David Whitehead, Central Algoma Secondary); a joint committee has already been established to look into the issue of an early retirement plan but has not, as yet, submitted a formal report, therefore, a recommendation by the fact finder in this situation would be inappropriate (Doug Belch, Halton Secondary); (3) to recommend against an early retirement plan because redundancy is not a problem and there is "no need to enrich the retirement benefits already available to these teachers" (Anne Barrett, Durham Secondary); and (4) to make no recommendation other than to maintain the status quo (Graeme McKechnie, Ottawa Secondary) or leave the issue to the parties for further negotiations (Alan Harries, Sault Ste. Marie Secondary). In both these situations, the parties were negotiating amendments to a plan contained within the expired agreement.

The issue of early retirement has gone to interest arbitration only once (see Stewart McBride, Ottawa RCSS, 1979-80). In this case the parties had already agreed in principle to establishing a plan; what was in dispute was the number of teachers who could participate in the plan, the amount of financial incentive, and other details such as the conditions under which a teacher might be entitled to retire early, and so forth.

The ERC began coding collective agreements for early retirement incentive plans in 1979-80. The trends are shown in the table below.

EARLY RETIREMENT INCENTIVE PLANS, 1979-80 to 1982-83

	1979-80		1980-81		1981-82		1982-83	
	No.	%	No.	%	No.	%	No.	%
Elem. Agreements on File	76		76		72		66	
Provision	3	4.0	5	6.6	9	12.5	9	13.6
Sec. Agreements on File	76		76		67		53	
Provision	9	11.8	15	19.7	19	28.4	21	39.6
R.C.S.S. Agreements on File	48		48		48		41	
Provision	1	2.1	1	2.1	2	4.2	3	7.3

NOTES:

1. The data for 1979-82 are taken from Monograph No. 26, Historical Analysis of Collective Agreements, 1975-76 to 1981-82, p. 40.
2. The data for 1982-83 are taken from The Provincial Overview, June, 1983.

For more details on the nature of early retirement incentive plans see Clause File No. 25, Early Retirement Incentive Plans, 1982-83, which is scheduled for publication in November, 1983.

GRIEVANCE PROCEDURE

a) Time Limit For Filing Grievance

The time limit for the initiation of a grievance was an issue in the fact finder's report for Sault Ste. Marie Secondary. The School Board was proposing that a grievance must be filed within ten teaching days. Alan Harries, the fact finder in the dispute, wrote:

> "With respect to the Board's position, it makes good sense not to leave matters outstanding for an indefinite period of time. With respect to issues where ultimately evidence may have to be given or, gathered, the leaving of a grievance for six months or a year or even longer seriously hampers both of the parties in gathering this evidence. Also it leaves a matter unresolved which may create continuing problems for the parties. If there is a dispute between the parties, then it must be resolved or grieved or dropped and the number of days being proposed by the Board seems to be an appropriate guideline to follow. Ten teaching days certainly gives adequate time for discussion or reflection and certainly if further discussion were necessary between the parties, the ten day limit could be extended by consent."

Although Mr. Harries did not use any statistical data, or at least mention that he did in his report, ERC Monograph No. 14, Grievance/Arbitration Procedures, states that in 1979-80, 10 or 15 days was the most commonly used limit for the initiation of a grievance. The range was from 5 to 60 days.

b) No Reprisals

In the same situation, the Sault Ste. Marie Secondary teachers requested that "no reprisals of any kind be taken by the Board or its administrative officials against any member because of his or her participation in the grievance procedure." The Board requested that the no reprisal clause be made reciprocal; the fact finder agreed with the Board and so recommended. Monograph No. 14, Grievance Arbitration Procedures indicates that of the 128 grievance procedures analyzed in 1979-80, 10 had no reprisal clauses and 6 of these were reciprocal e.g.

> "No action of any kind shall be taken against any person because of his participation in the grievance or arbitration procedures under this agreement." (Emphasis added)

c) Branch Affiliate Representation

In Bruce Secondary, the teachers asked the Board to amend the grievance procedure to allow a teacher to be represented, if he wished, by the Branch Affiliate "in any formal investigation involving misconduct or incompetence." The Board objected, arguing that such a provision could interfere with the "day-to-day dealings between a Principal and his staff members." The fact finder in the case was Eric Runacres. Since the teachers were limiting the involvement of the Branch Affiliate to situations where there was a formal request by the teachers, Runacres recommended the teachers' position. The ERC monograph on Grievance Arbitration Procedures found that 88 out of the 128 procedures studied in 1979-80 had clauses dealing with the issue of representation, either by the Branch Affiliate, the provincial federation association, legal counsel and/or others.

d) Avenues of Appeal for Discipline and Demotion

The London Secondary teachers requested teachers be given the right to grieve issues concerning demotion, dismissal, or the withholding of an increment on the grid. The school board opposed the request, claiming that the teachers already have the Board of Reference open to them as a form of redress in the event of dismissal, and there should not be two avenues of appeal open to the teacher. The fact finder, Alan Harries, agreed with the Board, that there should only be one avenue of appeal, but made no recommendation which one, although he did give an opinion, that "the Teachers should have access to the arbitration system on the event of their dismissal." But he was not of the same view for questions of demotion and withholding of increment, since these issues "could create a flood of grievances which are not only costly, but detract from the relationship of the parties."

This is a very complex problem, and the reader should consult the ERC monograph on Grievance/Arbitration Procedures. Of the 128 procedures analyzed in that document.

- 5 allow access to both avenues of appeal
- 22 allow access to either procedure
- 18 allow no appeal through the grievance procedure
- (also see section 2.2.5. of Monograph No. 14).

e) Policy Grievances

The Norfolk Elementary agreement contains a grievance procedure which prescribes in Step One, that the Teacher(s) meet with the Principal to resolve complaints. Failing resolution at Step One, the teacher(s) can proceed to Step Two, where the dispute would be put in writing and sent to the Director for disposition. The agreement has a clause which allows a policy grievance to be lodged by the Branch Affiliate(s) or by the Board at Step Two. The school board was concerned that the first step of the procedure might be circumvented, and recommended the following:

> "A grievance that affects only one teacher shall not be filed by the Branch Affiliate unless it is mutually agreed between the Branch Affiliate(s) and the Director of Education or it is established that the teacher is unable to file his/her own grievance."

The fact finder, Alan Harries, felt the Board's proposal was reasonable. He states:

> "Unless the grievance is viewed by both parties as a policy grievance, in my view the grievor should proceed through step 1 in an attempt to resolve the grievance. This is not a hardship to either of the parties in the circumstances and may in fact produce a settlement of the grievance at a very early stage and I so recommend."

f) Waiving Rights of Review

The Welland RCSS agreement had a provision whereby "before going to an arbitration, the teacher must agree in writing to accept the decision of the arbitrator as binding and waive all potential rights to review the decision in civil court." The teachers objected to this clause, saying it was unfair to make the teachers rather than the board relinquish their rights to review at the outset of the arbitration process. The school board responded, saying "the decision of an arbitrator ought to be the final resolution and that there should be no recourse to further action." Paula Knopf, fact finder in this dispute, responded as follows:

> "...I can see no justification for binding the teacher, rather than the Board to waive all rights of appeal of an arbitration decision. As the parties must well know, the scope of review of an arbitration decision is very limited by law. One cannot appeal an arbitrator's decision on the basis that one is unhappy with it. Instead, one must show there has been a denial of natural justice in the arbitration hearing or that the arbitrator

> has acted outside his jurisdiction. This limited scope of review acts as a protection to the parties' rights to ensure that a proper hearing has been held. It is in no one's interest that this limited scope of view be limited further to any party. Therefore, I recommend that [the requirement] "that the teacher waive his right to review the arbitration decision be removed from the collective agreement."

g) Catholicity

The Welland RCSS agreement contains a clause that requires the chairman of an arbitration board to be a Roman Catholic Separate School supporter and have no direct or indirect pecuniary interest in the parties. The teachers object to this clause, saying it is discriminatory. The Board defends it, arguing that it is essential for the Chairman to be a Roman Catholic separate school supporter because only this would ensure the consideration of the essential nature of the Roman Catholic Separate School system. The Board insists that catholicity be protected and respected in all contractual obligations between the teachers and the trustees. Paula Knopf, responded to this issue as follows:

> "This issue as to the catholicity of the chairman of the board of arbitration is a difficult one. I can appreciate the Board's concern that an arbitrator be knowledgeable and sensitive to the issues that are unique and important to a catholic board. However, I suggest that sensitivity to these issues is not the exclusive domain of a catholic school supporter. I do not agree with the Board that it is necessary that an arbitrator be catholic in order to appreciate the unique and important aspect of catholicity in the education of the children under their control. Thus, I do not agree that there is a need to keep this part of the clause in the contract."

h) Exclusion of Probationary Teachers

In the Dufferin Secondary negotiations the school board proposed to exclude a probationary teacher from seeking to redress his/her release by means of the grievance procedure. According to Harold Jakes, fact finder, The Board argues that its proposed new language is consistent with its contractual rights under clause 1.20 and its statutory responsibilities under the Education Act.

The Teachers correctly argue that this exclusion would be contradictory to the right of a member of the bargaining unit, which includes probationary teachers under contract, and to the principle of 'just cause'. Earlier in this report, I indicated that propationary teachers would have the right to address a disciplinary action through the grievance procedure and that they would be covered as well by any "just cause" language in the agreement. I am still of that opinion and I further indicated, that if the Board wished to exclude probationary contract teachers from the grievance procedure and just cause interpretations, that language would have to be written into the collective agreement as the Board proposes to do.

In the industrial sector, most collective agreements do exclude probationary employees from the grievance procedure and they can be released during the probationary period without the employer being required to give just cause. However, the probationary period is quite short and very rarely exceeds three months. Often it is only forty-five shifts or approximately nine weeks. In the education sector, beginning teachers can be required to be on probation for a period of up to two years and experienced teachers for one year. Probationary teachers contracts were also drawn up prior to the School Boards and Teachers Negotiations Act which required a grievance procedure to form a part of the collective agreement and before "just cause" language was written into most agreements. It is my opinion, that probationary teachers can only be excluded from these provisions by having a statement to that effect in the collective agreement. Therefore, it is understandable why the Board seeks this particular protection. However, because the probationary period for new teachers to the system is quite long, I can see no reason why the Board would be unable to assess a new teacher's suitability for permanent employment during such a long period of evaluation and to be prepared to release the probationary teacher for unsatisfactory performance, i.e. just cause. In addition, new teachers have little seniority and could be released under any surplus or redundancy provision which would also be within the Board's contractual rights.

No recommendation is made here but the issue could be the basis for exchange. It is apparent that it is a high priority with the Board and the Teachers may wish to exchange its acceptance for one of their own high priority items. As a compromise, it should be noted that probationary contract teachers can be released in December of the contract year if proper notification is given in November. This would be a three-month probationary period and it may be possible to exclude probationary teachers from the grievance procedure and just cause for three months only, i.e. September to November for the contract year if the parties so agree. This three-month period with no redress to grievance would coincide with such measures in the industrial sector.

JUST CAUSE

The concept of "just cause" was a subject of dispute in numerous fact finder reports. Three principal issues were at state: (1) should a just cause clause be included in the collective agreement? (2) should it include both permanent and probationary employees? and (3) should just cause be limited to discipline and dismissal or be extended to include the areas of demotion, transfer, withholding increment, alteration of teaching assignments, etc.

Virtually every fact finder who was faced with the issue was prepared to recommend a just cause clause - but, only for permanent employees. Probationary teachers, they felt, should be excluded (Alan Harries, Fort Frances-Rainy River Elementary and Secondary; Richard Jackson, Carleton Elementary; Paula Knopf, Renfrew Secondary; and Eric Runacres, Bruce Secondary however, see Harold Jakes, Dufferin Secondary for a different approach). This is not to imply, however, that some fact finders did not feel the school boards had a moral obligation to treat probationary teachers in a just manner (see, especially Eric Runacres, Bruce Secondary). Some fact finders were concerned that extending the scope of just cause beyond discipline and discharge to include areas like demotions, transfers and teaching assignments was not advisable because of the possibility of raising one grievance after another (see Anne Barrett, Durham Secondary; Alan Harries, Fort Frances-Rainy River Elementary and Secondary).

The following three examples are fairly typical of the positions taken by fact finders on the issue of just cause.

P. KNOPF, RENFREW SECONDARY, 1982-83

"The Teachers are seeking an addition to the Collective Agreement in the form of a "Just Cause" clause. The clause that the teachers are suggesting would provide that no teacher can be demoted, disciplined, or discharged except for just cause. Further, the teachers are willing to include a provision that if any teacher has been discharged who has been granted the hearing before the Board of Reference under provisions of Section 233 to 235 of the Education Act, that teacher will be deemed to have waived his or her rights to continue the grievance procedure through to arbitration under the collective agreement. The teachers argue that such a clause is a fundamental right of a worker and should therefore be enjoyed by teachers as well.

The Board is opposing the inclusion of such a clause in the collective agreement. While it acknowledges that such clauses are commonly found in the industrial sector, and even in the Canada Labour Code for non-unionized employees, such clauses are not appropriate in the education field because of the unique existence of the Board of Reference which replaces the need for such a clause. Further, the Board stated that it could not see any reason to put such a clause in a collective agreement when it did not get anything like a concession on management rights issues from the teachers. Finally, the Board argued that in any event the proposed clause of the teachers is far too broad in that it would provide a standard of just cause and arbitrable review to probationary employees. The Board refuses to made such a concession.

COMMENTARY

Recent developments in Ontario case law have established that absent anything in a collective agreement requiring an employer to administer it fairly or act with "just cause" arbitrators will not be allowed to impose such a duty of fairness upon the employer. (Metropolitan Board of Commissioners of Police & Metro Police Assoc., (1981), 33, O.R. (2d) 476). Traditionally, employees have been protected from unjust demotions, acts of discipline or discharge by the almost universal adoption of the just cause clause in the collective agreement. However, without such a clause, it is very difficult for an employee to challenge an unfair action of the employer. The Education Act, 1974, contains some elements of just cause standards in the substantive, procedural and remedial powers given to the parties. They are worth reviewing:

1. Section 147 gives the Board the right to hire and fire.

2. Section 224, 227 and Regulations 407 and 704 require the teacher to sign a contract wherein he or she agrees to maintain the prescribed qualifications as well as be "diligent and faithful in his duties: and to "perform such duties and teach subjects" as the Board may assign.

3. Section 227 provides that no one can teach without a certificate of qualification which is granted only if a person

is of good moral character and physically fit to perform his duties.

4. Section 229 and 230 as well as Regulation 704/8, section 2 enunciates the duties of a teacher and principal.

5. Section 233 sets out a procedural framework for giving notice, warning and reasons for "failure to conform with workplace standards".

6. Sections 232 and 242 provide that a permanent contract teacher may apply to the Minister of Education for Board of Reference to appeal a dismissal or termination of his or her contract. There is no such protection for a probationary teacher nor for any discipline to any teacher other than dismissal.

The School Board's and Teachers' Collective Negotiations Act, 1975, allows both probationary and permanent contract teachers to negotiate "any term or condition of employment put forward by either party".

Thus, it can be seen that the teachers are well within their rights by seeking to negotiate a just cause clause into the collective agreement and to have it cover both probationary and permanent teachers. Further, it is distinctly to their advantage to have such a clause entered into the collective agreement to give them additional protection. By agreeing to waive the right to proceed to arbitration should a Board of Reference hearing be granted on a discharge case, the teachers are in fact voluntarily giving up a right to an alternative procedure or remedy that would have otherwise been available to him.

I suggest that the Board review the Education Relations Commission publication, "Disciplinary Procedures and Other Provisions Effecting Employment Security; Teacher Evaluation, Just Cause, Withholding of Increment, Access to Personal Records, 1980-81" - June 1981. This will enable the Board to realize that more and more districts are adopting the just cause provisions and how broad the scope of such clauses could be. It also explains the justification and the rationale for the inclusion of such clauses.*

As I stated to the Board at the hearing, I do not accept that a worthwhile management rights power or principle would be given up if the just cause clause were adopted. In a properly administered board, no disciplinary decision would ever be made for anything other than just cause. Thus, to adopt such a standard into the collective agreement would only be to codify the only legitimate mode of practice.

NOTE: For a more recent analysis of Just Cause provisions, the reader is referred to the Provincial Overview, Sept. 1983, p.2.

It is not the universal practice to include probationary teachers in just cause provisions. There is often good justification for this because it ensures that employers are not saddled with inappropriate employees. In the case of a schoolteacher, I think the boards' responsibility to ensure highly qualified and competent staff is sufficient to justify the fact that it need not be fettered by a "just cause" clause with regard to probationary employees for pure reasons of efficiency.

The adoption of a just cause clause at this time should and will bring invaluable goodwill and improvement to the relationship between the parties. Therefore I recommend the adoption of a just cause clause as recommended by the teachers, with the limitation that it only be made available to permanent contract employees.

R. L. JACKSON, CARLETON ELEMENTARY, 1982-83

The Board is proposing a new clause giving it the right to terminate the employment of probationary teachers at the end of their probationary contract without such action being grievable or arbitrable under any just cause provision. The management rights clause currently allows the Board "to discipline or discarge for just and sufficient cause" and does not explicitly exempt probationary teachers from such protection. Consequently, the teachers may grieve such a termination although, it should be noted, they have not.

The Board supports this request by arguing that it needs the flexibility afforded by such a clause in situations of redundancy and incompetence. With respect to the latter, it points out that employers in industry and commerce are afforded such protection. The teachers, on the hand, argue that there should be no difference in the rights afforded probationary versus permanent teachers and that, in the case of teachers terminated for inadequate performance, they would not, and have not, grieved. Both parties agree that, in such instances, terminations have been handled in a procedurally careful and circumspect manner, thus minimizing embarrassment and damage to the teacher affected.

In view of the fact that such situations seem to have been worked out between the parties in an effective and just manner, and having regard also for the fact that negotiations is likely to be a difficult process this year because of the wage control issue, I recommend that this proposal be dropped for this bargaining round. I would observe, however, that in my view, it is in the interests of both parties, and new teachers themselves, to ensure that unsuitable people do not become established in the profession. I would be in favour of such a clause in principle and suggest it be considered for the next bargaining round. I note that the secondary agreement contains such an exclusion, as do eight elementary agreements on file with the ERC.

A. HARRIES, FORT FRANCES-RAINY RIVER ELEMENTARY, 1982-83

At the present time there is no just cause clause in the agreement. The Teachers are proposing as follows:

> "No teacher shall be disciplined, demoted, discharged or transferred without just cause being provided to the teacher in writing. This clause would apply to all teachers."

As can be seen, the Teachers are proposing that this clause apply to probationary teachers as well as teachers on permanent contract. In addition to discipline and discharge, the clause would also apply to demotion and transfer. The Teachers feel that only definite and solid educational grounds should be the only acceptable cause of any of the actions above-mentioned. The Board has proposed that no teacher on permanent contract shall be disciplined or discharged without just cause and if the teacher refers the matter to a Board of Reference, then the grievance procedures of the agreement would not be applicable. The Board feels that the clause should not apply to probationary teachers and any employer should have the right to dismiss a probationary employee if they so desire. They state that is the purpose of the probationary period. Also they state that a probationary employee is given ample notice of deficiencies and is given the opportunity to improve before any action is taken. The Board also resists the inclusion of demotion or transfer as this would create many grievances.

The parties are agreed obviously on one thing, that is, that some form of just cause clause should be put in the collective agreement. With this I agree. From the Teacher's standpoint, for absolute job security it would be desirable to have all four matters included as requiring just cause. On the other hand the Board's position that grievances would frequently arise with respect to demotion and transfer difficulties is realistic. This also restricts the Board in its flexibility in arranging its staff. To a certain extent the Teachers must rely on the bona fides of the Board with respect to transfers and demotion. A transfer policy is being worked on by a joint committee and this hopefully will resolve the transfer problem. I am also in agreement with the Board's position that this clause should apply to permanent teachers only. The purpose of a probationary period is to decide whether or not that teacher is compatible with the system. If it is not currently, then I would recommend part of Board policy being that any probationary teacher should be given notice in writing of any dificiencies in his/her work and be assisted in correcting same. This would give the probationary teacher sufficient notice of impending problems and give that person a chance to correct them.

Taking into account the above comments, I leave it to the parties to work out the exact wording of this clause in the contract.

RECOMMENDATION: That a just cause clause be included in the contract applicable to permanent teachers only referring to dischage or disciplinary matters.

TEACHER EVALUATION

Teacher evaluation was an issue in dispute at fact finding on eight occasions. With one or two possible exceptions, fact finders have been reluctant to recommend that evaluation procedures be placed in the collective agreement. Most of the reasons behind this position have been summarized by Richard Jackson, in his report on the Carleton Secondary negotiations, and by Anne Barrett in her report for Muskoka Secondary.

R. L. JACKSON, CARLETON SECONDARY, 1982-83

> The teachers have requested an extensive new section dealing with the evaluation of teachers. They justify this on the basis of some problems of inconsistent application and a general lack of awareness of the procedures on the part of the teachers. The Board argues that the awareness problem can be dealt with in more effective ways and that, if a teacher does feel that he/she was disciplined or dismissed as a result of an inequitable, unfair or flawed evaluation, the teacher has redress through a Board of Reference or through the grievance and arbitration procedures.
>
> I largely agree with the Board on this matter, for the reasons above. More importantly, this is another issue which is better left to the parties to work out away from the negotiation table.
>
> Evaluation -- measuring the recognition of fine performance and the diagnosing and treatment of poor performance -- is an area where teachers and boards should have strong mutual interests. In addition, performance appraisal, in terms of process and content, is too complex and difficult a subject (especially for professionals) to be worked out in the pressurized atmosphere of the bargaining table. It would appear that it would be to the mutual benefit of the parties if the Board were to make a description of the procedures more readily available to the teachers in the future.

A. BARRETT, MUSKOKA SECONDARY, 1982-83

> This Article sets out a procedure for the evaluation of teachers' competence and effectiveness in the classroom. The Teachers state that the Article essentially describes the present practice. It is proposed for inclusion in the Agreement merely to "ensure consistency through the system".

The Board says that this is a "complicated solution to a non-existent problem". It says that they have a co-operative approach to evaluation now in existence and that in fact, no teacher has had his or her increment withheld in recent memory. (Withholding of increment would stem from an unfavourable evaluation).

I could see no problem which needs to be redressed by this new clause, nor do I think that a rigid procedure is justifiable for the very delicate and sensitive task of teacher evaluation. I therefore recommend against the inclusion of this clause in the Contract.

EXISTING PRACTICES

Many branch affiliates of the Ontario Secondary School Teachers' Federation (OSSTF) have presented fact finders with a request for an "existing practices" clause. Although the precise wording of the clause varies from one situtation to another, its basic form is as follows:

> "The Board shall continue recognized existing practices and policies with respect to terms and conditions of employment. The Board may, however, with due notice to the Teachers, and on reasonable grounds expressed in writing, amend such practices. The Board's decision to do so shall be subject to the grievance procedure."

The Teachers argue, at fact finding, that an existing practices clause would give them an opportunity to provide input in the decision-making process and would provide some protection against the possible adverse effect of unilateral school board action. They also claim that it could streamline the collective bargaining process because it would obviate the need for bringing large numbers of working conditions issues to the bargaining table.

On the other hand, the school boards claim the term "existing practices" is highly ambiguous and could result in almost any action of the board becoming subject to arbitral review. According to the boards, this would unnecessairly hamper their right to manage the system.

In every instance fact finders have recommended against including an existing practices clause in the collective agreement. Fairly typical reasoning is contained in Richard Jackson's 1982 report on the Carleton Secondary negotiation:

> "While I can appreciate that the teachers would like the security afforded by such a clause, the arguments against it, taken

> together, are compelling, in my view. First, the teachers did not argue that changes made by the Board have disadvantaged them to any great degree. Second, the term "existing practices" would be impossible of interpretation, save through testing at arbitration, which the teachers would feel some pressure to do. I feel that in the board-teacher relationship, particularly one this mature and with this tradition of consultation, the parties should work out their own problems and definitions wherever possible. To leave it to a series of outsiders is expensive, an abdication of responsibility and, I believe, potentially harmful to the relationship. In addition, it may not always work to the teachers' advantage. Third there are undoubtedly changes made by the board which benefit teachers in a variety of ways; were the Board faced with such a clause in the agreement, it would no doubt be much more hesitant to change, and the system would become more rigid at a time where flexibility and adaptability are of great importance in dealing with a turbulent environment in which Board and teachers should be allies, not adversaries. The Board must ensure that, in effecting changes, it does so in a reasonable fashion and with prior consultation with the teacher(s) affected and, if appropriate, the Affiliates. Change is an excellent category of agenda items for consultation between the parties: those directly affected can usually make suggestions which result in a more effective change and, if both parties act openly and in good faith the relationship can be enhanced.
>
> Accordingly, therefore, I recommend that this clause not be included."

Not every situation, however, parallels the one described above. For instance, in some school boards, teachers are not consulted as a rule by either the administration or the board prior to important changes being made to the system. In cases like this, at least one fact finder tried to remove the issue of existing practices by having the parties focus their attention on what he felt was the real problem - the absence of any institutional structure that would provide for teacher involvement. Thus, he recommended the teachers drop the issue of existing practices in favour of accepting the establishment of an Advisory Management Committee composed of trustees, administrator and teacher representatives.

In another situation (Alan Harries, Fort Frances-Rainy-River Secondary) the fact finder tried to persuade the teachers to reformulate the problem by encouraging them to identify the particular existing practices they felt were "sufficiently important to be made the subject of a grievance procedure." Having so narrowed the problem, the parties could then negotiate over the inclusion of these more limited practices in the collective agreement.

The issue of existing practices has twice gone to interest arbitration (Rick MacDowell, Canadian Forces Base Petawawa Secondary; 1980-81; Anne Barrett, Kirkland Lake Secondary, 1981-82). In both cases the arbitrator ruled against including such a clause in the collective agreement.

Although not discussed in either fact finder reports or arbitration awards, there are some precedents for existing practices clauses. The James Bay Lowlands Secondary agreement for 1981-82 allows a teacher, group of teachers, or a Branch Affiliate to grieve over the interpretation or application of "any existing practice". The grievance is allowed to proceed through all steps in the procedure save the last, which is binding arbitration. A similar type of clause is found in the Prince Edward County Secondary agreement for 1981-83.

The 1981-82 agreement for Nakina Elementary contains the following wording:

> "'The Board' will not change, amend, or modify or alter any of its policies, directives, resolutions or motions which affect Teachers which are currently in effect during the term of this Agreement unless and until 'The Branch Affiliates' have been consulted thereon and have had an opportunity to discuss the proposals with 'The Board'.
>
> 'The Board' will consider any input which the teachers may offer when establishing Board Policy."

The North Shore Elementary and Secondary agreements for 1981-83 contain existing practices clauses that are virtually identical to the example used at the start of this discussion. Both these agreements appear to allow a grievance over existing practices to go all the way to arbitration.

Finally, there are other agreements which do not have an existing practices clause per se, but do have something similar. According to Monograph No. 14 (Grievance/Arbitration Procedures), 11 out of 135 agreements on file in 1979-80 had a "complaints" procedure which allowed non-contractual issues to be grieved up to but short of the arbitration step. These complaint procedures could possibly be used to challenge changes to recognized practices. Take, for example, the Hearst Secondary agreement for 1980-82. This agreement allows "any teacher who feels that he is being treated unfairly concerning any professional matter" to take the matter for resolution to the Principal and, if necessary as a final step, to make representation to the Board Committee of the whole.

LEGISLATIVE CHANGES

Another issue that is gaining province-wide attention, particularly among secondary school teachers, is the effect of legislative changes on the collective agreement. Examples of recent legislation affecting the terms and conditions of employment include Bill 82 (special education), Bill 127 (joint bargaining in Metropolitan Toronto), Bill 179 (Inflation Restraint Act) and any legislation which may grow out of the SERP (Secondary Education Review Project).

The teachers are proposing that where changes to either the Acts or Regulations of the Province of Ontario alter the terms and conditions of employment as set out in the collective agreement, the parties shall meet forthwith at the request of either party to begin to renegotiate the agreement in compliance with the law. In the event that the two parties cannot agree, the issue(s) would be sent to an arbitrator for final determination.

The boards object to this provision, arguing that legislative changes supercede the terms and conditions of the collective agreement anyhow. Furthermore, the boards claim that legislation usually provides for enforcement procedures, and at any rate, officials at the Ministry of Education have the authority to see that changes affecting the educational system are complied with. The boards are also concerned that such a clause would result in perpetual negotiations and/or arbitration.

Some of the teacher proposals go beyond the problem of simply altering the agreement to comply with new legislation; they would like to renegotiate any part of the agreement which is adversely affected by the legislation

-- whatever that may mean -- and have the agreement restore to the members of the branch affiliate the intent of the terms and conditions of work contracted for when the agreement was signed.

None of the fact finder reports written in 1982-83 were sympathetic to the teachers' position. All recommended that the new clause be dropped from the bargaining table. One experienced fact finder asserted that "to allow a collective agreement to be reopened because one party or the other feels that it has been adversely affected by any legislation would destroy the certainty and the permanency that the collective agreement is designed to create." (see Paula Knopf, Renfrew Secondary). Most fact finders took the following position:

> "If teachers' terms and conditions of employment are affected, this can (and, indeed, should) be the subject of joint consultation in order to work out an equitable and intelligent solution. Failing such a solution, the teachers can put it on the next negotiation agenda."
>
> (R.L. Jackson, Carleton Secondary)

To the best of our knowledge, the issue of reopening the agreement after legislative change has taken place has never gone to interest arbitration.

NIGHT/SUMMER SCHOOL TEACHING (CONTINUING EDUCATION)

This many-sided issue is of considerable province-wide importance, particularly to secondary school teachers: (1) the teachers want the instructors hired for teaching night school and summer school credit courses to be placed on a standard teaching contract; (2) they want the Board to ensure that the courses taught in summer and night school are similar in content and achievement to those taught in regular day school; (3) they want the remuneration to be equivalent to that paid to day teachers. In practice, this would involve pro-rating their salaries so that they would receive one-sixth their normal salary for each credit taught, and (4) the teachers would like surplus/redundant teachers to have first priority in gaining summer and night school teaching assignments. This would relieve some of the problems associated with declining enrolment as part-time teachers, for example, could supplement their income with that gained from night and summer school teaching.

According to the school boards, the issue of summer and night school teaching does not properly fall within the scope of bargaining as provided for under the **School Boards and Teachers' Collective Negotiations Act (Bill 100).** Not all of the courses taught in night school are credit courses, nor are the courses necessarily taught by members of the branch affiliates in that board. The boards also claim that the teachers' demands would result in substantial additional costs which could have the effect of rendering summer and night school programmes economically unfeasible. The boards believe there is no need to raise the rates of pay to the levels requested by the teachers because they have no difficulties attracting and maintaining qualified teachers at the current rates. Furthermore, they feel there is no justification for such an increase in remuneration because continuing education teachers do not have extra-curricular and administrative responsibilities like the regular teachers. In a word, the school boards find the teachers' request on this issue to be an unnessary encroachment on their management rights.

The teachers, on the otherhand, claim that Bill 100 does not specifically exclude from negotiations the issue of summer and night school teaching and therefore, as far as they are concerned, the issue is a valid subject for negotiations. The teachers believe that continuing education is becoming increasingly important in our society, and will continue to become so as the demands for job retraining increase. The Dufferin Secondary teachers, for example, point to the fact that only two years ago they had no continuing education programme, while now approximately 550 students are registered in 750 credits. As one fact finder summed up the teachers' perceptions: "As we move to an era where 'time' is not parcelled out as presently, and learning takes place at all times of the day and year - in a host of new ways - this artifical division between 'regular' school hours and 'continuing education' will probably disappear". What also concerns many of the teachers is that they feel the continuing education courses are not as academically rigorous as the regular courses, and that over time more and more students will be enticed to enrol in the continuing education programme, thus "eating into their market" and affecting their job security. The teachers are also somewhat miffed by the thought that some boards use the continuing education programme as a money making venture. They pay lower rates of pay, yet receive provincial grants comparable to the regular programmes.

This issue is a real source of friction in some areas. Before the lengthy

Sudbury strike in 1980, the school board ran a large summer and night school programme. As David Moore pointed out in his 1982 fact finder's report:

> "At the conclusion of that strike, the issues relating to night and summer school had still not been satisfactorily resolved and, as a result, the teachers through their provincial organization issued what is known as a 'pink letter' in relation to the operation of such programs. The effect of this letter was that the Board did not resume its operation of night and summer schools and, since that time, the pink letter has remained in force. No summer or night school programs have been offered.
>
> "...Up until this set of negotiations, the parties have been in a vicious circle. The Board apparently has been taking the position that it would not discuss these matters within the context of the collective agreement and, in any event, until the pink letter was dropped. The teachers were not prepared to drop the pink letter on the basis of some uncertain expression of intent on the part of the Board to discuss these matters outside the collective agreement. Thus the statement has continued and both parties are the losers because no summer or night school programs are operating."

The issue of summer and night school teaching has also been very contentious in the Carleton Secondary board. Graeme McKechnie relates in his 1982 report that the matter has been on the bargaining table there for the past four or five years, and that in June and July of 1982 the teachers threatened the board with a "pink letter" unless the issue was resolved. The issue was not resolved but the teachers did not carry out their threat. However, as McKechnie points out: "the fact that the incident occurred demonstrates the gravity with which both sides approach this matter.

The position which fact finders have taken toward this sensitive issue are "all over the map". Some fact finders seem to be somewhat sympathetic to the board's position. Anne Barrett, in her report on the Durham Secondary negotiations states:

> "In my opinion, these teachers [i.e. night and summer school teachers] are not properly part of this bargaining unit, but it appears, that the Board has recognized, in a limited way at least, the right of this bargaining unit to negotiate on behalf of these night school and summer school employees...
>
> "I would not recommend in favour of the expansion and further encroachment into the Collective Agreement of night school and summer school salaries and working conditions. Presumably the Board must pay competitive salaries to these teachers in order to attract day school teachers to take on the extra work. Supply and demand should be the determinants here."

Harold Jakes' report in the matter of the Dufferin Secondary negotiations reads, in part:

> "In my opinion, the clauses which are proposed by the Teachers are too specific and, as stated by the Board, may not be allowed under the Acts. Continuing education teachers cannot be members of the bargaining unit. In this light, the following recommendation is made.
>
> "It is recommended that the Teachers withdraw their proposal and, at this point in time, only negotiate a protective type of clause as outlined in proposed clauses 8.04 and 8.05 [editor's note: these clauses would require that (a) no teacher be given duties beyond the normal requirements until all members of the affiliate have complete assignment of six credits; and (b) there be no external hiring until all branch affiliate members had a full teaching load]

At the other end of the spectrum, so to speak, is David Moore, who adopted the position in his "Metropolitan Toronto" Secondary report the recommendations of a previous fact finder, Kevin Burkett. Burkett states:

> "I have not been persuaded by the arguments of the Boards that the cost, the administrative difficulties and the need for long service teachers rule out the practicality of an integration. Notwithstanding the difficulties envisaged, I am of the view that access to these jobs should exist in a period when the job security of qualified teachers is in jeopardy. As a minimum, I see access to these jobs extended to teachers wishing to teach full-time but who, because of the cut-backs in staff, are offered only part-time employment in the day schools. These teachers would be given the option of having their schedule extended into the night school or summer school in order to maintain a full-time teaching load

> and a full income. The encouragement of part-time teaching will result in an increasing number of part-time vacancies and in the result, I see the two responses as complementary."

Moore goes on to say in his own report:

> "In my view, this is a matter which should be explored in conjunction with the expiry of the accord and other contractual provisions dealing with surplus redundancy. I am not persuaded that there is any substantial reason why night school and summer school can not be used as a tool to alleviate the effects of continuing declining enrolment which will be working itself through the secondary panel. To include such teachers in a Collective Agreement does not necessarily mean that all of the costs anticipated by the Board will be associated with such an inclusion. I do not make any specific recommendation regarding the inclusion of provisions at this time other than to reiterate my view that Fact Finder Burkett's comments are pertinent and should be considered by the parties in relation to this issue in conjunction with the problem of declining enrolment.

In his Sudbury Secondary report, David Moore states:

> "In my view, whether or not this is inside or outside the collective agreement is of little importance. It may be that these matters, strictly speaking, do not fall within the ambit of Bill 100. However, in my opinion the parties should at least discuss these issues, with a view to coming to some compromise. It may be that such compromise would have to be phased or structured in a way that would preserve the parties' respective positions as to the viability and feasibility of including provisions relating to night school and summer school in the collective agreement. Be that as it may, it is clearly desirable that these programs be reinstituted by the Board. I recommend that the parties discuss these issues with a view to determining whether or not they can resolve the substantive questions raised, namely, method of selection and levels of remuneration, and that assuming they can resolve those matters, they then direct their minds to some mechanism to reduce their agreement to writing."

Doug Belch, in his Halton Secondary report, recommended that summer and night school teachers "receive pay comparable to the 'regular time Teachers'" and "that some consideration be given to filling those positions with Teachers who are declared redundant because of declining enrolment."

Alternative fact finder recommendations include: (1) postponing the issue until a more suitable time or climate of understanding has occurred (Eric Runacres, Bruce Secondary) and (2) deflecting the issue, either by suggesting its resolution by the courts (Graeme McKechnie, Ottawa Secondary) or by the Ministry of Education (Rick Jackson, Carleton Secondary).

The issue of summer school and night school teaching has been the subject of 5 interest arbitration awards. Like the situation with fact finding, views on the subject differ. (see Monograph No. 27, Interest Arbitration, pp, 246-248).

The Education Relations Commission does not code whether collective agreements contain provisions pertaining to rates of pay for summer school and night school teaching. The Ontario School Trustees' Council, though, has surveyed school boards in 1981-82 in regard to rates of pay for night school, and according to this survey, 13 secondary boards set out the rates in their collective agreement, while 42 provide only board policies. In the remaining 22 situations the boards either did not report, did not provide a night school programme, or did not offer credit courses in the night school programme.

A listing of the various Boards of Education is as follows:

IN AGREEMENT

Atikokan
Durham
Hamilton
Huron
Kent
Lakehead
Leeds & Grenville
Niagara South
Nipigon-Red Rock

IN BOARD POLICY

Brant
Carleton
Central Algoma
Cochrane-Iroquois Falls
Dryden
Dufferin
East Parry Sound
Essex
Frontenac

IN AGREEMENT

Nipissing
Norfolk
Prescott & Russell
Timmins

IN BOARD POLICY

Geraldton
Hastings
Hearst
Kapuskasing
Kenora
Kirkland Lake
Lake Superior
Lambton
Lennox and Addington
Lincoln
London
Muskoka
North York
Northumberland & Newcastle
Ottawa
Oxford
Peel
Perth
Peterborough
Red Lake
Renfrew
Sault Ste. Marie
Stormont, Dundas & Glengarry
Sudbury
Toronto
Waterloo
Wellington
Wentworth
West Parry Sound
York Borough
York Region

Most of the 48 separate school boards do not offer night school credit programmes. Of the 8 boards which do offer credit courses, all set out the rates in board policy, and none of them have included rates in the collective agreement.

According to ERC Monograph No. 26, Historical Analysis of Collective Agreements (see page 40) 24 or 36.9% of the 67 secondary agreements on file for 1981-82 had a provision which provided priority summer/night/occasional/or driver education teaching assignments to surplus/redundant teachers.

The issue of summer and night school education is coming to a head in 1982-83, as the OSSTF has "pink listed" a number of boards. These include:

. Etobicoke	(1983-84 night school credit & non-credit courses)
. York Borough	(1983-84 night school credit & non-credit courses)
. Sudbury	(night and summer school credit and make-up courses)
. Ottawa	(night and summer school credit courses 1983-84 and summer school, 1983)
. Durham	(night school credit courses 1983-84 and summer school 1983)
. Scarborough	(night school credit courses 1983-84 and summer school, 1983)
. East York	(night school credit courses 1983-84)

The Ottawa Board of Education and the Scarborough Board of Education have both asked the Ontario Labour Relations Board to rule on whether the pink letter violates Bill 100. The OLRB hearing on the Ottawa charge concluded on April 19. A similar hearing on the Scarborough charge was adjourned April 22 until mid-May. Meanwhile the pink letter remained in effect in both areas.

The Ontario Labour Relations Board has now ruled that the action by the teachers did not constitute an unlawful strike. The reasons for their ruling were summarized in the Provincial Overview for June, 1983:

> a) First, the Board's Continuing Education Program could not be considered a program or school within the meaning of the term in the definition of "strike" in the **School Boards and Teachers Collective Negotiations Act,** and therefore the concerted refusal to teach or apply to teach could not be considered a strike within the meaning of that Act.

b) Second, because these teachers are not yet employees of the Board in respect of the Continuing Education Program, their concerted refusal to apply to teach in the Program does not constitute a strike within the meaning of the **Labour Relations Act**.

PROFESSIONAL DEVELOPMENT DAYS/FUND

This issue appeared in five fact finder reports in 1982-83. In general, the teachers were asking for:

a) an increase in the number of days allocated for professional development;

b) an increase in the amount of money set aside for such activities;

c) input into how the money is spent, i.e., a say in the design of professional development programmes,

and

e) some assurance that the board would provide supply teachers to cover the classes of any member who was absent from school to attend a professional development function.

Fact finders, on the whole, were reluctant to offer specific recommendations on these issues.

The parties' rationale for their positions, and the general approach of fact finders is contained in the following two excerpts.

> D. BELCH, HAMILTON SECONDARY, 1982-83
>
> The Professional Development Fund provides financial assistance to Teachers to attend seminars, conferences and other functions that will assist in the professional growth of the Teacher.
>
> Presently the agreement calls for the establishment by the Board of a fund in the amount of ONE HUNDRED AND TEN THOUSAND DOLLARS ($110,000.00) to be allocated regionally and to seventeen secondary schools for the period September 1st, 1982 through August 31, 1983. In addition, a TEN THOUSAND DOLLAR FUND ($10,000.00) is established for the period of January 1st, 1982 through December 31st, 1982 and is retained in the Central Administration Office and is administered by the Superintendent

of Instruction and is to be used exclusively for the staff development needs of the secondary panel.

For the period September 1st, 1983 through August 31st, 1984 the Teachers propose that the Professional Development fund be established at THREE HUNDRED THOUSAND DOLLARS ($300,000.00) while the Board favours retaining the fund at its present level of ONE HUNDRED AND TEN THOUSAND DOLLARS ($110,000.00) for the same period.

In addition, the Teachers propose that a ONE HUNDRED THOUSAND DOLLAR FUND ($100,000.00) fund should be established for the period January 1st, 1983 to December 31st, 1983 for the staff development needs of the secondary panel. The Board, on the other hand, favours maintaining the fund at its present TEN THOUSAND DOLLARS ($10,000.00) level.

The Teachers also propose three more changes in this area. Firstly, that the Board shall fund the amount required to provide supply Teachers for any member absent from school to attend a professional development function. Secondly, that a retraining fund shall be established by the Board in the amount of ONE HUNDRED THOUSAND DOLLARS ($100,000.00) to be used as payment for tuition and other course expenses incurred by a Teacher who is taking a course relating to obtaining or upgrading skills that would be required to teach in a different curriculum area and finally, that one school day in April shall be designated by the Board as the Professional Development Day.

The Board, on the other hand, states that they are prepared to provide an additional TEN THOUSAND DOLLAR ($10,000.00) fund for the period January 1st, 1983 through December 31st, 1983 for staff development needs as opposed to the ONE HUNDRED THOUSAND DOLLARS ($100,000.00) that the Teachers request. The Teachers' proposals as to payment of supply Teachers, the retraining fund of ONE HUNDRED THOUSAND DOLLARS ($100,000.00) and the establishment of the Professional Development Day in April are not acceptable to the Board.

The Teachers rationale for their proposals is that costs for transportation, accommodation and registration fees are rising and it is necessary to increase the amount available to simply maintain the level of professional development now provided. Further, because of the increased expectations of Teachers, they require increased levels of professional development. The Teachers must become familiar with many new curriculum guide lines introduced by the Ministry of Education and therefore increased funding is necessary. They point out that a major drain of the Professional Development Fund is the cost of supply Teachers for professional development and they suggest that the cost for Teachers be funded separately so that the needed funds for transportation, accommodation and registration may be more readily available.

Finally, the decline in student enrolment is followed by the decline in the number of Teachers and as a result of this decline more and more Teachers are required to teach in areas in which they have never taught before or are presently unqualified to teach. A retraining fund should be established to provide monies necessary to allow Teachers to become qualified in other areas and/or take refresher programmes in areas for which they are qualified but have not practised for some time.

During the hearing the Board indicated that the funds in this area are negotiable and that the Board has sympathy for the concept of retraining. It points out that whatever money is allocated to the Professional Development Fund will depend on the cost of concluding the balance of the Collective Agreement.

RECOMMENDATION

I hesitate to make a recommendation in this area which may prove to be a stumbling block in the way of the parties reaching a negotiated contract. During the hearing both sides indicated that the point was negotiable.

H. JAKES, DUFFERIN SECONDARY, 1982-83

In this new clause, the Teachers propose language with respect to the minimum number of professional activity days, the school calendar, and the use to which these days will be applied. The Teachers argue that there must be some formula devised so that the school calendar is consistent from year to year. Their main concern here is that the Board has, on occasion, changed or mofified recommendations from an Education Committee which had been struck to make recommendations. They want the process simplified and a standard application of a formula. In their opinion, the committee system is ineffective.

The Board argues that this clause is a further encroachment in the area of management rights and that it is the responsibility of the Board to determine these matters to which it has the authority under the Education Act.

I concur completely with the board and I remind the Teachers that they have the protection of the Education Act with respect to the minimum number of days and that it is their responsibility to convice the Board of the need for additional days up to the maximum which is allowed.

It is recommended that the Teachers withdraw their proposal under clause 15.01 (New).